

Supreme Court of the United States

OCTOBER TERM, 1969

No. 729

DONALD BACHELLAR, ET AL.,

Petitioners,

—v.—

MARYLAND,

Respondent.

ON WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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IN THE CRIMINAL COURT OF BALTIMORE

STATE OF MARYLAND

vs.

DONALD CARTWRIGHT BACHELLER

* * * *

Magistrate's Appeal Docket of 1966.

January Term.

Number 456.

Charge:—Disorderly Conduct.

Appearance of Fred E. Weisgal, filed.

April 19, 1966	Commitment.
April 19, 1966	Disposition: Guilty, 60 days in Baltimore City Jail, and fine \$50.00 and costs committed. I. Sewell Lamdin, M.C.J.
April 22, 1966	Filed in Criminal Court.
June 6, 1966	Motion to Dismiss filed.
June 8, 1966	Plea: Not Guilty and Issue before Sworn Jury. Prendergast, Judge.
June 8, 1966	Defendant's Questions on Voir Dire filed.
June 8, 1966	Not concluded; and resumed on 9, June, 1966.
June 9, 1966	Not concluded; and resumed on 10, June, 1966.
June 10, 1966	Motion for Judgment of Acquittal filed and denied. Prendergast, Judge.
June 10, 1966	Not concluded and resumed on 13, June, 1966.

- June 13, 1966 Defendant's Request for Instructions to Jury filed.
- June 13, 1966 Verdict: Guilty.
- June 13, 1966 Judgment: Sixty (60) days in Baltimore City Jail from 13, June, 1969, and fined \$50.00 and costs, consecutive.
- June 14, 1966 Committed to Baltimore City Jail; failed to pay fine and costs.
- June 14, 1966 An Appeal to the Court of Appeals of Maryland filed.
- June 15, 1966 Supplement to Appeal to the Court of Appeals of Maryland filed.
- June 16, 1966 Take Bail in amount of \$500.00 pending disposition. Prendergast, Judge.
- June 16, 1966 Recognizance taken by Samuel London in amount of \$500.00.
- June 16, 1966 Order of Court extending time for filing Transcript to and including September 5, 1966, filed. Predergast, Judge.
- September 5, 1966 Order of Court extending time for filing Transcript to Sept. 10, 1966, filed. Carter, Judge.
- September 7, 1966 Transcript of Testimony filed. Transcript No. 2861.
- November 1, 1966 Petition to prosecute an Appeal as an Indigent Defendant together with oath in forma pauperis filed.
- November 25, 1966 Hearing on Defendant's Petition to proceed as an Indigent before Cardin, Judge. (Sub Curia).
- December 21, 1966 Order of Court denying Petition of Defendant to proceed as an Indigent filed. Cardin, Judge.
- December 29, 1966 An Appeal to the Court of Appeals of Maryland from denial of defendant's Motion to proceed as an Indigent filed.

- January 20, 1967 An Appeal to the Court of Special Appeals of Maryland from Order denying defendant's Motion to proceed as an Indigent filed.
- January 20, 1967 Transcript relative to question of in-Order of Court extending time for filing digency to March 1, 1967, filed. Cardin, Judge.
- January 23, 1967 Petition to Appeal as an Indigent Defendant filed, heard and denied. Cardin, Judge.
- January 26, 1967 An Appeal to the Court of Special Appeals of Maryland from denial of Petition to Appeal as an Indigent Defendant filed.
- February 21, 1967 Transcript of Testimony filed. Transcript No. 2862.
- February 24, 1967 Transcript of Record on Appeal as to question of indigency transmitted under seal to the Court of Special Appeals of Maryland and certified copy of Transcript of Record transmitted under seal to Francis B. Burch, Attorney General of Maryland.
- March 22, 1967 Mandate: Court of Special Appeals of Maryland, Misc. No. 1, Initial Term, 1967.
Donald C. Bacheller vs. State of Maryland.
Appeal from the Criminal Court of Baltimore.
Filed: February 28, 1967.
January 27, 1967: Petition to proceed in forma pauperis.
February 28, 1967: Respondent's Answer.

March 22, 1967

February 28, 1967: Joint Petition to waive printing briefs, etc.

February 28, 1967: Agreed Stipulation as to facts.

February 28, 1967: Waiver of Oral Argument.

March 15, 1967: Order of appointment of counsel.

March 16, 1967: Order as to procedure on Appeal.

March 21, 1967: Judgment reversed and Per Curiam filed. Judgment reversed, and case remanded for entry of an Order permitting the Appellant's to proceed as indigents in conformity with this opinion.

March 27, 1967

Order of Court permitting appellant to proceed as an Indigent and authorizing the payment of Record on Appeal by the State of Maryland filed. Cardin, J.

STATE OF MARYLAND, CITY OF BALTIMORE, To
Wit:

I HEREBY CERTIFY, that the foregoing is a true copy of the Docket Entries in the aforesaid Case, taken and copied from the Record of Proceedings of the Criminal Court of Baltimore.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the Criminal Court of Baltimore, this 3rd day of April, A. D., 1967.

/s/ Lawrence R. Mooney
Clerk of the Criminal Court
of Baltimore

[SEAL]

COMMITMENT TO

- ☒ Baltimore City Jail, or
☐ Maryland House of Correction, or
☐ The Maryland Correctional Institution — Hagerstown
☐ The Maryland Correctional Institution for Women — Jessup

State of Maryland

vs.

Donald Cartwright Bacheller

: IN THE MUNICIPAL COURT OF
: BALTIMORE CITY, CRIMINAL DIVISION,
: PART
: Northern
: Arrest Register Number 64861

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

☒ Warden of the Baltimore City Jail
☐ Warden of the Maryland House of Correction
☐ The Maryland Correctional Institution — Hagerstown
☐ The Maryland Correctional Institution for Women — Jessup

WHEREAS Donald Cartwright Bacheller hereinafter called the Traverser, after having been informed by me of his right to have a trial by jury on the charge hereinafter mentioned, preferred against the said Traverser on the oath of Sgt. Joseph DiCarlo and having thereupon declared that he wished to waive his said right to a trial by jury, and abide by the determination of said charge by me, was thereupon on the 19th day of April, 1966 duly tried before the undersigned, a Judge of the Municipal Court of Baltimore City, Criminal Division, presiding in the Northern Part of the said Court, in the State of Maryland, upon the charge of, and was thereupon on said trial found guilty of the offense of unlawfully acting in a disorderly manner to the disturbance of the public peace on a public street, to-wit: 3300 Block of Greenmount Avenue, on or about the 28th day of March, 1966, in Baltimore City in the State of Maryland, and it was thereupon adjudged that the said Traverser for the said offense should:

☐ A. IN DEFAULT OF FINE

☐ PAY A FINE of

Dollars and Cents costs and it was FURTHER ADJUDGED that if the said sums should not be paid the said Traverser should be imprisoned in the BALTIMORE CITY JAIL until such payment be made or until the said Traverser should be discharged in due course of law.

☒ B. IN EXECUTION OF SENTENCE AND DEFAULT OF FINE

BE IMPRISONED in the BALTIMORE CITY JAIL for a period of Sixty (60) days and IN ADDITION thereto pay a fine of \$50.00 Dollars, and \$4.00 Cents Costs, with the imprisonment herein; and it was FURTHER ADJUDGED that if the said sum should not be paid forthwith, the said Traverser should be imprisoned in the Baltimore City Jail, until such payment be made or until the said Traverser be discharged by due course of law. AND WHEREAS the said Traverser has not paid the said fine and costs or any part thereof imposed as aforesaid but therein has made default.

NOW THEREFORE, you are hereby commanded to receive from any officer the body of the said Traverser and safely keep him in your Jail and custody until the said Traverser shall be thence delivered according to law.

☐ C. IN EXECUTION OF SENTENCE

☐ BE IMPRISONED

☐ In the BALTIMORE CITY JAIL
☐ In the MARYLAND HOUSE OF CORRECTION

for a period of

☐ D. IN EXECUTION OF INDETERMINATE SENTENCE

☐ BE IMPRISONED

☐ The Maryland Correctional Institution — Hagerstown
☐ The Maryland Correctional Institution for Women — Jessup

for an indeterminate period not to exceed from the date hereof

NOW THEREFORE, you, are hereby commanded to receive from any officer the body of said Traverser and safely keep him in your Institution until the said Traverser shall be thence delivered according to law.

☐ E. The sentence imposed in Section aforesaid shall run (a) CONCURRENTLY or (b) CONSECUTIVELY with the sentence imposed in case in Arrest Register No.

Given under my hand and seal this 19th Day of April 1966

Prepared by

1 — M. C. B. C.

Court Clerk

I, Sewell Landin

(Seal)
Judge of the Municipal Court of Baltimore City
presiding in Criminal Division, N Part

TRUE COPY, TEST

Edward S. Starkloff
from the Court Clerk

Edward S. Starkloff, Chief Clerk
MUNICIPAL COURT OF BALTIMORE CITY

POSTED TO COSTS RECORD
 Date 2/21/67 By A.R.
 Page 303

Fees & Costs

Fine	<u>5000</u>
States Attorney	<u>500</u>
Clerk	<u>780</u>
Sheriff	<u>1600</u>
Attorney	<u>500</u>
Total	<u>8380</u>

#12494

JUN 16 1966 - Take bail in

The State recommends that bail in the amount of Five Hundred (\$500.00) dollars be accepted in this case pending disposition of the appeal from the judgment of the Criminal Court of Baltimore heretofore entered.

George J. Helinski
 George J. Helinski
 Deputy State's Atty.

APPROVED

J.M.
 Judge

Samuel London
3500 Antioch Farms Rd
816 Shuter St 740

JUN 16 1966

500.00

No. 1540 No. 1966

STATE
 VS.

Bail

Name Donald Cartwright Bacheller, M/W/19

Address 2737 St. Paul Street

Charge Disorderly Conduct

6/9/66 - Not concluded

6/10/66 - Not concluded

Offense Report No. _____

WITNESS

Lt. James DiPino, Northern

Sgt. Joseph DiCarlo, "

" Arnold Bedsworth, "

Off. James Welsh, "

" Leonard Stem "

A JUN 8 1966

N6 T J

JUN 13 1966

G S

60 DAYS & C.F.

TO OK & FINE

500.00 COSTS.

FEENDERGAST, J

APR 22 1966

Filed

19



The first manuscript of this
by the author of the history of
the city of London is now in
the hands of the British Museum
of the original from the library
of the University of Oxford
and is now in the hands of the
British Museum.

The second manuscript of this
by the author of the history of
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of the University of Oxford
and is now in the hands of the
British Museum.

The third manuscript of this
by the author of the history of
the city of London is now in
the hands of the British Museum
of the original from the library
of the University of Oxford
and is now in the hands of the
British Museum.

APPEAL

Mr. Clerk:

Please enter an appeal to the Criminal Court of Baltimore City on behalf of Donald Bachellar who was fined \$50.00 and costs and sentenced to Sixty (60) days in Jail for disorderly conduct.

/s/ Fred E. Weisgal
FRED E. WEISGAL

APPEAL NOTED this 19th day of April 1966, 10:00
A.M.

/s/ Edward S. Starkloff
EDWARD S. STARKLOFF
Chief Clerk
Municipal Court of Baltimore
City

IN THE CRIMINAL COURT OF BALTIMORE CITY

Appeal No. 456-462

STATE OF MARYLAND

v.

DONALD BACHELLAR, ET AL.

MOTION TO DISMISS

Come now defendants by their attorney, Fred E. Weisgal, Esq., and respectfully move the Court to dismiss the prosecution against them; and as reason therefor state as follows:

1. That they are charged with violation of Article 27, § 123 of the Annotated Code of Maryland, defining the offense of disorderly conduct;

2. That Article 27, § 123, on its face and as construed by the Court of Appeals of Maryland,

a. Abridges defendants' rights of free speech, expression, petition and assembly guaranteed by the Constitution of the State of Maryland and by the First and Fourteenth Amendments to the Constitution of the United States; and

b. Is vague, indefinite and overbroad, and thereby denies defendants' rights to due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States;

3. That this motion is supported by the following authorities:

Edwards v. South Carolina, 372 U.S. 229 (1963)

Henry v. City of Rock Hill, 376 U.S. 776 (1963)

Cox v. Louisiana, 379 U.S. 536 (1965)

Shuttlesworth v. City of Birmingham, 382 U.S. 87 (1965)

Ashton v. Kentucky, 34 U.S.L. WEEK 4398 (U.S., May 16, 1966)

Respectfully submitted,

/s/ Fred E. Weisgal
FRED E. WEISGAL
111 North Charles Street
Baltimore, Maryland

Counsel for defendants

IN THE CRIMINAL COURT OF BALTIMORE CITY

Appeal No. ———

STATE OF MARYLAND

v.

DONALD BACHELLAR, ET AL.

MOTION FOR JUDGMENT OF ACQUITTAL OR
FOR DISMISSAL ON THE EVIDENCE

Come now defendants by their attorney, Fred E. Weisgal, Esq., and respectfully move this Court to enter a judgment of acquittal, or in the alternative a judgment dismissing the prosecution against them; and as reason therefor state as follows:

1. That they are charged with violation of Article 27, § 123 of the Annotated Code of Maryland, defining the offense of disorderly conduct;

2. That the evidence herein shows that this charge arises exclusively out of conduct by the defendants protesting American involvement in the war in Viet Nam and seeking to persuade others by peaceful means lawfully to oppose American involvement in the war in Viet Nam;

3. That the evidence is insufficient to enable a reasonable juror to conclude beyond a reasonable doubt that any of these defendants are guilty of the offense defined by Article 27, § 123;

4. That there is no evidence whatever that any of these defendants are guilty of the offense defined by Article 27, § 123; and that their conviction without evidence on this record would deny them the due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, *Thompson v. City of Louisville*, 362 U.S. 199 (1960);

5. That Article 27, § 123, on its face and as construed by the Court of Appeals of Maryland, and as applied to these defendants on the facts of record in this cause,

a. Abridges defendants' rights of free speech, expression, petition and assembly guaranteed by the Constitution of the State of Maryland and by the First and Fourteenth Amendments to the Constitution of the United States; and

b. Is vague, indefinite and overbroad, and thereby denies defendants' rights to due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

In support of paragraphs 5(a) and 5(b) of this motion, defendants specifically state that on its face, as construed, and as applied to these defendants on the facts herein, Article 27, § 123:

i. Fails to give fair warning of the nature of the conduct which it prohibits, *Lanzetta v. New Jersey*, 306 U.S. 451 (1939);

ii. Purports to punish indiscriminately conduct protected by the freedoms of expression of the First and Fourteenth Amendments and conduct not so protected; and by requiring persons exercising those freedoms to guess the line of constitutional protection at their peril, deters the exercise of federally guaranteed free expression, *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Cox v. Louisiana*, 379 U.S. 536 (1965);

iii. Would, if applied in this case, punish conduct of the defendants immunized against any state prohibition or punishment by the First and Fourteenth Amendments, *Edwards v. South Carolina*, *supra*; *Henry v. City of Rock Hill*, 376 U.S. 776 (1963);

iv. Purports to make conduct criminal on the sole ground that it is disturbing or disquieting to others, and thus punishes persons for the expression of views merely because other persons may find those views offensive or disturbing, *Terminiello v. Chicago*, 337 U.S. 1 (1949); *Henry v. City of Rock Hill*, *supra*; *Ashton v. Kentucky*, 34 U.S.L. WEEK 4398 (U.S., May 16, 1966).

v. Would, if applied in this case, punish the defendants on the sole ground that their views con-

cerning American involvement in the war in Viet Nam were offensive or disturbing or disagreeable to other persons, *ibid.*;

vi. Purports to make criminal mere refusal to comply with a police order, without requiring that the order be reasonable, and thus subjects the liberty of persons in public places to the arbitrary will of the police, *Shuttlesworth v. City of Birmingham*, 382 U.S. 87 (1965);

vii. Would, if applied in this case, punish the defendants solely for refusal to comply with a police order which was

(A) unreasonable and arbitrary;

(B) unconstitutional, because it required the defendants to desist from conduct protected by the First and Fourteenth Amendments; and

(C) unconstitutional, because it required the defendants to desist from lawful activity on no other ground than that such activity aroused hostility and ideological opposition in other persons, *Wright v. Georgia*, 373 U.S. 284 (1963);

viii. Is so general in its definition of the offense created by it, that it fails generally and will fail in this case to guide and restrict the jury in its application; and that it therefore allows the jury to convict defendants and these defendants in particular arbitrarily and discriminatorily, and by reason of the jury's distaste for defendants' ideology, and on the basis of conduct protected by the First and Fourteenth Amendments, *N.A.A.C.P. v. Button*, 371 U.S. 415 (1963).

Respectfully submitted,

/s/ Fred E. Weisgal
FRED E. WEISGAL
111 North Charles Street
Baltimore, Maryland
Counsel for defendants

Argued—Overruled. 10 June 66 /s/ J.G.P.

IN THE CRIMINAL COURT OF BALTIMORE CITY

Appeal No. ———

STATE OF MARYLAND

v.

DONALD BACHELLAR, ET AL.

DEFENDANTS' REQUESTS FOR INSTRUCTIONS

Defendants by their attorney, Fred E. Weisgal, Esq., respectfully request the Court to charge the jury as follows:

INSTRUCTION I.

You may not convict these defendants of disorderly conduct unless you find beyond a reasonable doubt that they refused to obey a reasonable and lawful police order, clearly communicated to them.

INSTRUCTION II.

For these purposes, a police order to move along or to disperse is reasonable and lawful only if it is made to prevent an imminent public disturbance, and if it is reasonably necessary in order to prevent such a disturbance. If you have a reasonable doubt that in this case the police ordered the defendants to move along; or if you have a reasonable doubt that any such order issued by the police to the defendants was made to prevent an imminent public disturbance; or if you have a reasonable doubt that any such order was reasonably necessary to prevent this kind of disturbance you may not convict these defendants.

INSTRUCTION III.

Now, when I speak of a "public disturbance," I do not mean simply anger or hostility or any feeling of this sort on the part of the public, nor do I mean merely an episode of shouting or singing or name-calling not calculated to spill over into imminent violence. When I speak of a "public disturbance," I mean physical violence, or the attempt to use physical violence, by one person against another.

INSTRUCTION IV.

And I should make one other point clear. Even if you find that these defendants refused to obey a police order which was reasonably necessary to prevent a public disturbance, you may not convict the defendants if they were doing only what they had a right to do. That is, there are certain activities, certain things which in this free country all citizens have a right to do, even though they may anger or irritate others. If a citizen does only these things, and nothing more, a policeman may not order him to stop doing them merely because these things anger others and make others want to resort to violence. In such a case it is the obligation of the police to protect the citizen from violence by others, and they may not tell him to stop doing what he is doing, or to move along or go away merely because of threats of violence by others.

ALTERNATIVE INSTRUCTION IV-A.

[Defendants request that the Court give instruction IV as set out above. If instruction IV is given, instruction IV-A should no be given. However, if this Court should rule that instruction IV is not proper to be given, the defendants, while respectfully reserving an exception to such ruling, request that the Court at the least give Instruction IV-A, as follows:]

And I should make one other point clear. Even if you find that these defendants refused to obey a police order which was reasonably necessary to prevent a public disturbance, you may not convict the defendants if they were doing only what they had a right to do. That is, there are certain activities, certain things which in this free country all citizens have a right to do, even though they may anger or irritate others. If a citizen does only these things, and nothing more, a policeman may not order him to stop doing them merely because these things anger others and make others want to resort to violence. In such a case it is the obligation of the police to protect the citizen from violence by others if this is at all practicable, and they may not tell him to stop doing what he is doing, or to move along or go away merely because of

threats of violence by others, unless the police reasonably believe that it is impossible to prevent violence from occurring by restraining only those persons who are threatening violence. In such a case, the police are obligated first to attempt to quell the danger of violence by telling those persons who are threatening violence to move along or disperse, and by restraining or arresting them if necessary and if practicable, before they may order persons to stop doing acts which are themselves peaceful and which threaten to lead to a disturbance only because they anger others.

INSTRUCTION V.

Under no circumstances may you convict these defendants if the only conduct of theirs which was likely to lead to an imminent public disturbance was the expression of views or ideas which other people did not like or resented, or which stirred other people to anger or violence. The defendants may be convicted only if their conduct, or their manner of expressing their ideas was offensive and likely to lead to a public disturbance, and not if it was the ideas themselves that they were expressing or supporting, which were likely to create a public disturbance. Where conduct—in this case the physical acts of the defendants—is likely to lead to imminent public disturbance, the police may order it stopped, and the refusal to obey such an order is disorderly conduct. But where the danger of imminent public disturbance created by an individual arises from the ideas or the views or beliefs which he expresses, he may not be required to stop and is not guilty of disorderly conduct for refusing to obey a police order to stop expressing his views.

INSTRUCTION VI.

Specifically, I charge you that if the only threat of public disturbance arising from the actions of these defendants was a threat that arose from the anger of others who were made angry by their disagreement with the defendants' expressed views concerning Viet Nam, or American involvement in Viet Nam, you must acquit

these defendants. And if you have a reasonable doubt whether the anger of those other persons was occasioned by their disagreement with defendants' views on Viet Nam, rather than by the conduct of the defendants in sitting or staying on the street, you must acquit these defendants.

INSTRUCTION VII.

The defendants at all times had a legally protected right to set forth their political views, beliefs or ideology even if the result was to induce a condition of unrest, create dissatisfaction in others, invite dispute, or even stir people to anger at their views. If they did nothing more to create a public disturbance than to exercise this right, the police could not lawfully order them to move along or go away, and they are not guilty of disorderly conduct for disobeying such a police order.

ALTERNATIVE INSTRUCTION I-A.

[Defendants request that the Court give instructions I to VII as set out above. If these instructions are given, none of the following instructions should be given. However, if this Court should rule that instruction I is not proper to be given, the defendants, while respectfully reserving an exception to such ruling, request that the Court at the least give instruction I-A, as follows:]

You may not convict these defendants of disorderly conduct unless you find beyond a reasonable doubt that they either (1) refused to obey a reasonable and lawful police order, clearly communicated to them; or (2) knowingly and purposely engaged in acts which they had no lawful right to do, and which were calculated and likely in themselves to lead to an imminent public disturbance; or (3) knowingly and purposely engaged in acts which they had no lawful right to do, and which obstructed or hindered pedestrians or traffic.

[If instruction I-A is given, the following instructions should also be given:

Instruction II, *supra*, without amendment.

Instruction III, *supra*, without amendment.

Instruction IV [or IV-A] with these amendments:

(1) After the words "if you find that these defendants" in the second sentence, add: "knowingly engaged in acts which were likely to lead to an imminent public disturbance, or that they"; and

(2) Change the period at the end of the fourth sentence to a semi-colon, and add thereafter: "nor may a citizen be convicted of disorderly conduct for doing these things".

Instruction V with these amendments:

(1) After the word "disturbance," in the third sentence, add: "that conduct is disorderly conduct; also"; and

(2) After the words "disorderly conduct" in the last sentence, add: "for expressing those views or".

Instruction VI, *supra*, without amendment.

Instruction VII with this amendment: after the words "exercise this right" in the second sentence, add: "they are not guilty of disorderly conduct;".

An Instruction VIII, as follows:

INSTRUCTION VIII

Now, I have said that you may convict the defendants of disorderly conduct if they knowingly and purposely engaged in acts which they had no lawful right to do, and which obstructed and hindered pedestrians or traffic. Of course, no one has a lawful right to sit or lie on a sidewalk so as to obstruct or hinder pedestrians or traffic. But you may not convict the defendants of disorderly conduct even if you find they sat or lay on the sidewalk unless you find two further things. First, you must find that they knowingly and purposely sat there at a time when they were permitted to get up and go away by the police, and when they knew that they were permitted to get up and go away. You may not convict them if you find that they were thrown involuntarily onto the sidewalk and not permitted to rise by the police; or if you find that they were thrown involuntarily onto the sidewalk and—while sitting or lying there—they be-

lieved that the police wanted them to stay there or would not want them to or let them get up. Second, you must find that by sitting or lying on the sidewalk they actually obstructed or hindered pedestrians or traffic. You may not convict the defendants, even if they knowingly and purposely sat or lay on the sidewalk, if the sidewalk at that time and place could not be used or crossed over by pedestrians by reason of the pickets or any police who were watching the pickets, or any crowd which was gathered to watch the pickets. If these defendants themselves were obstructing the passage of pedestrians on the sidewalk, or if police or a crowd who were attracted by these defendants' sitting on the sidewalk or lying on the sidewalk were obstructing the passage of pedestrians, then these defendants would be guilty. But if the pickets or police or crowd were obstructing the sidewalk when the defendants came out onto the sidewalk, and the defendants then sat there during a time when the sidewalk could not be used by pedestrians because of these prior obstructions, the defendants would not be guilty of disorderly conduct simply for sitting or lying on the sidewalk.

Respectfully submitted,

/s/ Fred E. Weisgal
 FRED E. WEISGAL
 111 North Charles Street
 Baltimore, Maryland
 Counsel for defendants

INSTRUCTION

The Jury is instructed that as a matter of law the behavior of the Defendants while in the U.S. Recruiting Office did not constitute disorderly conduct.

All requested instructions refused. Covered in changes considered proper.

/s/ J.G.P.
 13 June 1966

[fol. 2]

IN THE CRIMINAL COURT OF BALTIMORE

PART 3

Appeals #456 through 462/66

STATE OF MARYLAND

—vs.—

DONALD L. BACHELLER, ALLAN B. GREEN,
WAYNE L. HEIMBACH, DANIEL KLEIN,
DANIEL RUDIMAN, DAVID HARDING

June 8, 1966

Before Hon. J. Gilbert Prendergast and a Jury

Appearances:

Allan B. Lipson, Esq., Malcom Kitt, Esq., On behalf
of the State.

Fred Weisgal, Esq., On behalf of the defendants.

[fol. 3] (FOLLOWING IN CHAMBERS)

THE COURT: The Court expected these cases to be called for trial but was informed rather unexpectedly the motion to dismiss had been filed by defense counsel a day or two ago. The Court has never seen the motion until a xerox copy of it was presented at that point by Mr. Weisgal. The court clerk had no such motion but I understand it was in fact filed with the Clerk of the Criminal Court.

MR. WEISGAL: On Monday, June 6th.

THE COURT: Now there has been some discussion on the motion. I am satisfied that under the authority of *Drue vs. State*, 224 Md. 186, later in 236 Md., 349, as well as in *Harris vs. State* 237 Md. 299, the Court of Appeals of Maryland has upheld the constitutionality of our disorderly conduct statute, found in Section 123 of Article 27. Actually the current version of the statute

is found in Michie Supplemental Volumn 3 of the code. Mr. Weisgal takes the position that the Supreme Court of the United States adopted a different philosophy than [fol. 4] has the Court of Appeals of Maryland. I am by no means satisfied that this is so but as I see my duty I am bound by decisions of the Court of Appeals of Maryland and must follow it. To put it in the alternative or negative form I simply do not have the temerity to overrule the Court of Appeals. Accordingly I must deny the motion to dismiss as to each of the six appeals before me. In the event that there should be a verdict of guilty as to any one or all of the cases, I shall be happy to have Mr. Weisgal file motions for a new trial and the matter may be considered in more detail and heard at greater length at that time. There is of course no automatic exception to the defense counsel to the ruling I just announced.

* * * *

[fol. 11]

(END OF CONFERENCE IN CHAMBERS)

* * * *

[fol. 14] THE CLERK: In Appeal 456 the docket of [fol. 15] 1966, the State charges disorderly conduct. In the appeal you are charged with unlawfully acting in a disorderly manner to the disturbance of the public peace on a public street, to wit 3300 block of Greenmount Avenue, on or about the 28th day of March, 1966, in Baltimore City, State of Maryland. What is your plea to the charge?

MR. WEISGAL: Not guilty, jury trial. In order to save time, your Honor, all six defendants are charged with the same offenses. Can we just possibly read it one more time and call the defendants up here?

* * * *

[fol. 16] THE CLERK: As to each of these defendants, you are familiar with the appeal and it contents, counsel?

MR. WEISGAL: I am.

THE CLERK: And do you waive the reading thereof?

MR. WEISGAL: I waive the reading.

THE CLERK: The pleas as to each?

MR. WEISGAL: Not guilty.

THE CLERK: Court or jury?

MR. WEISGAL: Jury trial.

. . . .

[fol. 24]

(WHEREUPON THE JURY WAS SWORN IN)

. . . .

[fol. 25]

April [sic: June] 9, 1966

. . . .

[fol. 26] SGT. FIRST CLASS HARRY O. GRUMLEY,

. . . .

[fol. 27] DIRECT EXAMINATION BY MR. LIPSON:

Q Sgt. Grumley, how long have you been a member of the United States Army?

A Sixteen—

MR. WEISGAL: At this time I think, based on the opening statement made by Mr. Lipson, it would be highly prejudicial and improper for the sergeant to testify. According to Mr. Lipson's testimony—

THE COURT: He didn't testify, he made a statement.

MR. WEISGAL: According to Mr. Lipson's statement, your Honor, he said anything that he described certainly and clearly showed that no disorderly conduct occurred in the recruiting office. Consequently this has no bearing on what took place on the outside once these young men were removed. There is only one issue in front of this court and that is—

THE COURT: You have an objection to make?

MR. WEISGAL: I object to this man being allowed [fol. 28] to testify, your Honor, because it is prejudicial.

THE COURT: Well I think the State is entitled to due process of law. I cannot prejudge what the witness will say. Therefore I must overrule your objection. I have no idea at the moment what the actual testimony will be.

MR. WEISGAL: Very well.

THE COURT: Your objection is overruled.

MR. LIPSON:

Q Sgt. Grumley, how long have you been a member of the U.S. Army?

A Sixteen years and ten months.

Q And what is your present duty station?

A I am U.S. Army recruiter at Greenmount Avenue.

Q That address on Greenmount Avenue?

A 3328.

Q Sergeant, calling your attention to Monday March 28 of 1966, were you on duty that date?

A Yes, sir.

Q Specifically calling your attention to sometime around three p.m., afternoon, were you on duty at that time?

[fol. 29] A Yes, sir.

Q I'd like you to tell his Honor and the ladies and gentlemen of the jury what happened, what if anything unusual happened at that time and place?

* * * *

A At approximately 3:20, I would say give or take five minutes, it started to collect on the outside of the building which would be the corner of Venable and Greenmount Avenue.

Q You say started to collect. What started to collect?

A There was unusual activities in regard to individuals usually that are not there. At this time of course I had been informed of this demonstration which was to be taking place at my installation. Of course when they started to arrive, individuals from the age of six months I suppose to students, why we anticipated this is exactly what was taking place and the demonstration was start-[fol. 30] ing. Outside the installation I didn't observe until they got before the windows which I have approximately a ten foot window. These individuals started to parade with cardboard signs in regard to anti Viet Nam and one thing and another and we were well informed this was beginning.

Q Sergeant, approximately how many people would you estimate were there in the beginning, around 3:20 as you described?

A Well when it got fully underway, I'd say between thirty and forty people. Some of these may have been—

Q Where were these thirty or forty people located at the time?

A The majority of them was directly in front of the office walking in a circle, on the sidewalk.

Q What else if anything happened on the sidewalk after that?

A Approximately 3:30 three individuals, I'll say three, may have been more, quite a few people were present around in the office at this time approached me within the office and their request was if I would display these anti Viet Nam posters in regard—which I couldn't do if I [fol. 31] wanted to—there's regulations for such a display and I wouldn't have done it in the first place and I declined to display these.

Q Sergeant, do you know who made the request of you?

A Yes, sir. This gentleman on the end here.

* * * *

MR. LIPSON: For the record the witness has identified Mr. Harding, one of the defendants as the person who approached him. Now how many people were in there at that time, sergeant?

A Well, as I said, within a particular group that approached me with regard to the posters at that time I'm sure of three.

[fol. 32] Q Can you identify any of those individuals that were in the office at that time

A I believe so.

Q If you see them, point to them.

A The one on the end was one. The one sitting next to him was the second one and I'm pretty sure that the fourth one from the end was also included in the group at that time.

MR. LIPSON: For the record the witness has identified three of the defendants in the case that he recognizes as being in the place at that time.

Q What happened then, sergeant, anytime after 3:25?

A Well when I declined to put up the posters they claimed they were going to stay there until I would put up the posters. I asked them if they would leave. I informed them it was a recruiting station. My mission there was to give out informaton to individuals seeking to enlist in the U.S. Army or to accept applications for the U.S. Army and it was not a place to sit and discuss private affairs and I asked them if they would leave. At that time they declined and said they were going to stay [fol. 33] with the establishment until the posters were displayed.

Q What time was this sergeant?

A This is approximately 3:30, 3:35.

Q Now what happened after that?

A Well of course at this particular time, Mr. Udoff was the U.S. Marshall for the State of Maryland, was present in the office and we informed them it was federal property that these people were sitting on because it was leased. Let's see—we were in some hassle or discussion as to regards which time I should close the office. On the front door it is listed from 8:30 in the morning until five in the afternoon. I had previous commitments for that evening at the Civic Center with Career Opportunities and at the same time with Barry Sadler. My desire was to close early to allow me time to freshen up and be prepared to appear in public.

Q What time did you in fact close that day?

A We did not start closing the office until five minutes to five in the afternoon.

Q What did you do at that time?

[fol. 34] A I was informed by Mr. Udoff to drop the shades, close the venetian blinds, to cover the front window, turn out the lights and inform the parties within the office that I was closing. At this time they declined.

Q What if anything occurred after that?

A Well then I told them one more time and they still declined. At this time Marshall Udoff informed me he would take the situation from there. He went to the individuals. He informed them who he was. He showed each and every one of them his credentials, told them

he was the U.S. Marshall for the State of Maryland. He asked them to leave one more time. They declined. They were going to stay within the office until the posters were displayed. Therefor he asked them to leave one more time peaceably. He said he had the assistance of deputy marshalls within the office and also Baltimore City Police department to remove them from the premises. Of course the decline was as it had always been and they proceeded to remove the individuals from the office.

* * * *

[fol. 35] MR. WEISGAL: There is no doubt that all six of them went into the office and we are not contesting the fact. If you want that stipulation, you have it.

MR. LIPSON: Right. For the record then—

THE COURT: It is stipulated then that all six of the defendants had gone into the recruiting station at Greenmount Avenue. Anything else that they were the [fol. 36] ones involved in the sergeant's testimony or is that not stipulated to?

MR. WEISGAL: It's not stipulated.

THE COURT: They were there at the time of these events. Is that stipulated to?

MR. WEISGAL: It is stipulated that six of them went into the office, your Honor. I'm not stipulating that all six of them were thrown out of the office. I'm just saying all of them left.

THE COURT: I think you made it clear.

* * * *

[fol. 38] FRANK UDOFF,

* * * *

DIRECT EXAMINATION BY MR. LIPSON:

Q Mr. Udooff, were you serving in your official capacity as a United States Marshall on Monday March 28, 1966?

A Yes, I did.

[fol. 39] Q In this capacity did you have occasion to go sometime in the afternoon to 3328 Greenmount Avenue, United States Army recruiting office?

A I did.

Q What was the nature of your visit there?

A The nature of my visit to that area was the instructions from the United States Attorney for the District of Maryland to go and observe.

Q Did you in fact go and observe?

A Yes, I did.

Q What if anything did you observe, Mr. Udoff?

A Well inside the premises they had a number of demonstrators coming and going the two hours I was there.

Q What if anything were they doing besides coming and going, if anything?

A Well, doing a lot of talking, discussing, arguing with the army sergeant on the premises.

* * *

[fol. 40] Q Now, Mr. Udoff, calling your attention now to sometime shortly prior to 5 p.m., what if anything happened at that time?

A Shortly before 5 p.m. they were asked to leave by the Army technical sergeant and they just refused to leave.

Q Were you present when this was taking place?

A Yes, I was present.

Q What if anything did you do at this point?

A Well I identified myself to the several boys who were there. Some were sitting on the sofa, down on the floor. I showed by identification to them.

Q What form did this identification take, Mr. Udoff?

A What form is it? This identification here that I am the United States Marshall for the District of Maryland, and you fellows are on federal property.

* * *

[fol. 41] Q Now, Marshall, what happened at that point after you showed your identification?

A I told them that the place was going to close in just about a minute or two and would they get up like gentlemen and walk on out. One of the boys shook his head indicating no and I repeated that, I believe one more time or twice. I don't recall the exact number of

times. When they all started to squat down on the floor, on the sofa, I told them then that I was going to request the assistance of the police, who were on the premises, to assist me and they were going to be deputized as marshalls to help me out.

Q Was this in fact done?

A Yes, sir.

Q What happened then, sir?

[fol. 42] A Well they made no attempt to move. It was five o'clock. So I went ahead and picked up the hands of one of the boys on the sofa—he did not offer too much resistance—and some of the gentlemen in back of me escorted them outside.

Q By escorting them, can you physically describe the activity involved?

A This one in particular walked on out with me. I believe the first one I picked out.

Q Can you describe any of the other physical activity you described?

A I picked up one more by the hand and I think, I can't specifically state, because I just passed him right on back, the entire operation consumed no more than sixty seconds.

Q When they were carried back, what if anything was done with these individuals? What if anything was done after you carried them back? What did you carry them back to?

A Just escorted them to the front door and went outside.

[fol. 43] Q Did you see what happened at the front door or anything?

A They sort of disappeared from my view because there were venetian blinds and I couldn't see.

Q You weren't outside at the time?

A We had no jurisdiction on the outside. It was strictly on federal government property, on the inside.

Q Speaking of jurisdiction, marshall, under what authority were you on the precises?

A Well I was under the authority and instructions, legal advice of the United States Attorney for Maryland,

Tom Kenny. But I have a description of what a marshall should do in the case of an emergency.

MR. LIPSON: The State would introduce as State's Exhibit Number 2 the job description of the U.S. Marshall.

MR. WEISGAL: I would object, your Honor. It has nothing to do with this case. As all of Mr. Udoff's testimony.

THE COURT: What is the purpose of the proffered exhibit, to show the authority of the marshall to order the defendants from the property leased by the United [fol. 44] States government?

MR. LIPSON: Yes, sir. To show the U. S Marshall's authority.

THE COURT: Is there any dispute?

MR. WEISGAL: There is no dispute.

MR. LIPSON: If there is no dispute I will withdraw the document. Your witness.

CROSS EXAMINATION BY MR. WEISAL:

* * *

[fol. 45] Q Mr. Udoff, you smiled when you used the word 'escorted' the gentlemen to the door. The first gentleman you said you took him by the hand and two officers got behind them and escorted him to the door. Were you still holding him by the hand?

A I personally did not escort him to the door, I just lifted him up off the seat.

Q I thought you said you escorted him? You took him by the hand, then what happened?

A I lifted him on up and somebody else took him and took him out the door.

Q He was on a chair?

A He was on a little sofa.

Q In other words, you know who the first man was?

* * *

[fol. 46] THE COURT: I'll strike out the last answer as not being responsive. The jury will disregard it. The question is can you identify anyone or more of these young men here in court today? Can you, Marshall?

A Your Honor, I can recognize them all but I just can't identify which one was Number one man that I had to pick up.

MR. WEISGAL:

Q I'm going to tell you who it was, Mr. Udoff. It happened to be this man here.

A It could be.

. . . .

MR. LIPSON: For the record, Mr. Weisgal is pointing to the defendant Mr. Green.

MR. WEISGAL: Mr. Bacheller.

MR. LIPSON: Mr. Bacheller, I'm sorry.

. . . .

[fol. 47] Q Now you say you picked him up by his hands and he got off the sofa, is that correct? Then what happened?

A Well somebody to my rear—

Q Who, Mr. Udoff?

A I don't remember which one of the men because we had so many police officer. All I had was just about at that time only two deputies with me.

Q Just do me one favor, describe, give me your definition of the word 'escorted'.

. . . .

THE COURT: You object to that: I overruled it. What did you do? That is really what he wants to know. [fol. 48] A As I said before I picked him on up and turned him over to somebody in back of me.

THE COURT: That isn't quite clear. Did you pick him up bodily or touch them by the hand and walk out?

A No, I had to pick them up off the sofa bodily, by the hands.

MR. WEISGAL:

Q Mr. Bacheller—

A The first one.

Q The first one?

A Oh, yes.

Q You said you picked him up by the hands, your

testimony as I recalled it, you took him by the hands and he quite willingly got up?

A He didn't resist too much.

Q He didn't resist?

A But he didn't try to get up.

Q He got up?

A After I got—

Q Two officers got behind him and shoved him out the front door?

[fol. 49] A That I didn't see.

Q You didn't see that?

A No sir.

Q You didn't see the rest of the men being escorted out of the door, being lifted up bodily by the police and thrown out the front door?

* * *

A I was in charge at the time. I was looking right in front of me for the next one to be picked up and I did not turn around to see what was going on in the back because I had sufficient men there by that time.

MR. WEISGAL:

Q You had sufficient men there by that time to do what?

A To escort them outside

Q In other words, they were all escorted out the door, is that your testimony, Mr. Udoff?

[fol. 50] A So far as I was able to observe, yes.

* * *

Q What does escort mean to you, Mr. Udoff?

A Just what I said. They had to be picked up, he had to be sort of forced out.

Q Forced out?

A He didn't want to leave.

Q Which one, Mr. Udoff?

A Which one what?

Q Which one had to be forced out?

A That I can't recall either. I'm not able to identify. Several of them had to be carried out.

Q Get back to the first man again. Escorted or pushed?

[fol. 51] A I still say he was escorted out.

Q All right. Now the second man, escorted or pushed, or thrown?

A He wasn't thrown. Not while I was looking at him.

Q You know he wasn't thrown.

A I said while I was looking at him he wasn't thrown.

* * *

Q You said they disappeared from view. Now this recruiting center is on a flat line, you can look straight out the door and see everything that is going on, is that correct?

A To some degree, yes.

Q How did they disappear from view?

A It's quite simple. About five minutes to five the Army Technical Sergeant lowered the venetian blind, [fol. 52] this one great big venetian blind on the store window. Then you couldn't see anything on the outside.

* * *

Q Mr. Udoff, did you in fact stand there with the blinds down in front of the window and just stand there and not look out the window?

A Well, sir, if you want to know what had happened, fine, I'll tell it to you. I didn't go to the window. The blind was down. I went back in a little sergeant's office where he had a desk, waited for the crowd to disperse so we can leave the premises.

MR. WEISGAL: Now—

[fol. 53] THE COURT: Let him finish.

MR. WEISGAL: I asked him if he looked out the window.

A I did not.

* * *

GEORGE K. McKENNY

* * *

[fol. 54] THE BAILIFF:

Q State your name and assignment?

A George K. McKenny. Deputy United States Marshall.

DIRECT EXAMINATION BY MR. LIPSON:

Q Mr. McKenny, calling your attention to Monday March 28, 1966, sometime after three p.m. in the afternoon, did you have occasion to be in company with U.S. Marshall Frank Udoff?

A Yes, I did, sir.

Q Where was that, Mr. McKenny?

A This was at the Army recruiting station on Greenmount Avenue.

Q What if anything did you do there?

A Initially we observed the demonstration that was going on in the vicinity of the recruiting station and we observed the action of the crowd and the demonstration during the afternoon.

Q Did you have occasion to enter the building at that location?

[fol. 55] A Yes, I did.

Q How long did you stay there as you recall?

A As I recall we were there possibly for around, from 2:30 or 3 until about 5:30.

Q Now what if anything did you do around 5 o'clock or shortly before?

A As I recall, around 5 o'clock the sergeant in charge of the recruiting office had to close the office and at that time some of the demonstrators were still on the premises, on the inside of the recruiting office. I believe they were asked to leave and they did not. Subsequently we had to remove them from the inside of the Army recruiting office.

Q Did you personally remove any yourself?

A Yes, I did.

Q How were they removed?

A We took them by the arms and lifted some of them out, those that would not walk and escorted them to the door.

Q Did you leave them at the door?

A Yes, we did.

[fol. 56] Q Who if anyone was assisting you during this process?

A We had some of the other deputies there and also the U.S. Marshall.

Q Was there anyone else involved besides the U. S. Marshall's office?

A There were some officers from the Baltimore City Police force.

Q Do you recognize any of the gentlemen or people that you removed from the office in the courtroom today?

A I can't positively identify them. I see some gentlemen who look similar to the ones we removed.

Q After you deposited them outside, took them to the front door, did you observe anything at that point?

A After we took them to the outside of the front door, that's where our particular end of it ended and we proceeded to close up the office. Shades were dropped and the door was locked and we continued on with our other business.

* * * *

[fol. 57] CROSS EXAMINATION BY MR. WEISGAL:

Q Mr. McKenny, how many men were, did you help remove from the office?

A I can't recall an exact amount I'd say—

Q I'm talking about you personally?

A I can't give you exact number. I'd estimate about four at least.

Q You helped with four?

A I believe so, I can't be sure.

Q By helping, what do you mean, what exactly did you do?

A I escorted the gentlemen to the outside of the door.

Q By escorting you mean you walked alongside of them?

A That's right.

Q Nobody pushed them?

A I don't recall, sir.

Q Nobody threw them?

A I don't believe so.

Q How many police officers were in the Marshall's [fol. 58] office, the recruiting office at that time?

A I cannot give you an exact figure sir.

Q Ten?

A I would estimate, I'd say over six. I can't—

Q Over six?

A I can't specifically say how many.

Q That consisted of the U.S. Marshall—

A He's not a policeman. You mentioned policemen.

Q Oh, there were six policemen. How many marshalls?

A There were about five of us.

Q There were about eleven men actually in the office?

A Yes, approximately.

Q How long did it take to escort all of these six young men out of the recruiting office?

A I again, sir, can't you a definite time period but I estimate about fifteen minutes, somewhere in there.

Q Took fifteen minutes to take them out?

A Just an estimate.

* * * *

[fol. 59] Q Mr. McKenny, you say you just walked them to the door or carried these men to the door and there you went back to get other men?

A That's correct.

Q You don't know what happened to them at the door?

A No, I can't honestly say.

Q Could police officers have been there at the door and taken over?

[fol. 60] A What do you mean to take over, sir?

Q I don't know. Escort them the rest of the way?

A They possibly could, yes.

Q The four men, approximately—how many men were in the office, how many men were escorted out of the office?

A I don't know the exact number, sir. Like I said I believe I escorted about four of them out.

* * * *

Q What do you mean by escort, Mr. McKenny?

* * * *

A As I said they would not leave under their own power, so we walked with them to the door.

Q You walked with them to the door?

[fol. 61] A That's correct.

* * * *

REDIRECT EXAMINATION BY MR. LIPSON:

Q Now, Mr. McKenny, you have testified that you did in fact carry some bodily, is that correct?

A That's correct.

Q Do you recall specifically how many you carried bodily and how many you carried otherwise?

A I don't recall the exact number. As I stated they were sitting down. They were told to move. When they did not move we had to stand them up. If they did not walk we had to carry them.

Q You can't accurately recall how many went on their feet and how many went otherwise, is that correct?

A No, I can't recall the exact number.

. . . .

RECROSS EXAMINATION BY MR. WEISGAL:

Q How many men were used to carry each one, those that were carried?

. . . .

[fol. 62] A I believe two, sir, when we had to carry somebody.

Q You know how many men were in the office when you got there at 3 o'clock?

A You mean demonstrators?

Q Yes?

A I don't recall the exact figure. I would estimate it was over six.

Q Over six?

A Yes.

Q When the time came to remove the men, the demonstrators from the office, you can't tell us how many you removed?

A I estimate it to be around four.

Q That you removed. But I'd like to know how many you estimate were actually removed?

A I don't recall what the exact count was, sir.

Q Approximately

A No, sir.

[fol. 63] Q Can you give an approximation?

. . . .

A I can't give you an approximation.

* * *

Q Of the men that you carried, you remember what part of the body you were holding?

A The arms and the feet.

Q You were holding the arms and the feet?

A The arms and feet.

Q In other words, you were standing on one side holding a man's arm and his leg and somebody was standing on the other side holding his arm and leg, is that correct?

A You can carry them that way or from head to foot.

Q I'm asking you how you were carrying?

A Probably a combination of both, sir.

Q And then you took them to the front door. Did you stand them up when you got them to the front door or place them right there on the pavement outside?

A Put them outside the front door, sir.

[fol. 64] Q On the pavement?

A Well, yes, that's all. That's outside the front.

Q I'm sorry.

A The pavement, that's where we put them.

* * *

FURTHER REDIRECT EXAMINATION BY MR. LIPSON:

Q One further question, Mr. McKenny. In what position were they placed on the pavement when you deposited them outside the door?

A I don't recall, sir. As I recall I believe most of them were in a standing position. There might have been some that were seated but I don't recall.

Q Some were seated you say?

A Yes.

* * *

FURTHER RECROSS EXAMINATION BY MR. WEISGAL:

Q How did they get seated, Mr. McKenny?

* * *

[fol. 65] A I imagine they sat down, sir.

Q Did you see them sit down?

A I can't honestly say that I saw a specific person sit down.

Q Well what you are saying then, you placed each on the outside then on his feet?

A No, sir, I didn't say that. What I am saying is that we placed them out outside. Some may have been on their feet, some may not have been on their feet.

Q In other words, so you placed them outside down on their back? In other words, if you were holding one man by his arm and one man by his foot—

A If they were not standing they were in a seated position.

Q That's how they get on their seat?

A What's that, sir?

Q It's unimportant. How many would you say you put out on their feet and how many in a seated position?

A I said, sir, I didn't recall the exact number.

Q But you didn't throw anybody out, did you, at no time?

[fol. 66] A I didn't throw anybody.

Q You never heaved anybody out of that building, did you?

A Not that I recall, sir.

Q Did you see anybody else heave anybody out of that building?

A Not that I recall.

* * * *

Q Did you observe any of the police officers take anybody out of the building?

A I don't recall, sir.

* * * *

[fol. 67] SGT. JOSEPH DiCARLO,

* * * *

[fol. 68] DIRECT EXAMINATION BY MR. LIPSON:

Q Sgt. DiCarlo, how long have you been employed by the Baltimore City Police Dept?

A Approximately fourteen years.

Q Sgt. DiCarlo, calling your attention to Monday March 28, 1966, sometime in the vicinity of 2:30 p.m., were you in the vicinity of 3328 Greenmount Avenue?

A Yes, I was.

Q What were you doing there?

A I was detailed at a demonstration that was to be held at 3328 Greenmount Avenue, the office of the U.S. Army recruiting office.

Q Were there any other police officers, members of the Police Department with you at that time?

A Yes, there was.

Q Who if you can recall was there with you?

[fol. 69] A Inspector German, Capt. Mooney, Lt. DiPino and nine other patrolmen.

Q Now what if anything unusual did you observe after arriving at the scene?

A Approximately 3 p.m., about fifteen pickets showed up to picket the U.S. Army recruiting office, carrying signs protesting the war in Viet Nam. By 3:15 I would imagine there were about thirty or thirty-five pickets. At 3:20 six gentlemen entered the office of the U.S. Army recruiting office and staged a sit-in.

Q What happened at that point?

A Well the other pickets continued to picket outside with the signs. They were constantly moving. About five of five I entered the office with the lieutenant and the U.S. Marshall being present, and the gentlemen were asked to leave the premises as it was closing time and they were going to lock the doors.

Q Who did the asking, sergeant?

A Sgt. Grumley who was the recruiting officer for the U.S. Army, and U.S. Marshall Frank Udoff who identified himself to the men and told them he was the U.S. [fol. 70] Marshall and he asked them to leave.

Q What happened at that point, sergeant?

A They said they were not going to leave and the U.S. Marshall said if you don't leave I have enough help that we'll have to put you outside. Again they would not leave. At this point the U.S. Marshall asked our assistance in putting the men outside, which we did. A police officer, with a U.S. marshall, placed the men, carried the

men outside to the pavement and placed them on the sidewalk.

Q Can you describe how this was done, Sgt. DiCarlo?

A They were carried bodily. One U.S. marshall and one officer on each side of them that were picked up and placed outside.

Q Where outside were they placed?

A On the sidewalk, immediately in front of the door. Once they were placed down two of the gentlemen tired to crawl back in, in between the door and the door jam so the door couldn't be closed.

Q You speak of gentlemen and gentlemen that were carried out. Do you see any of those gentlemen in the [fol. 71] courtroom today, sergeant?

A Yes, I do.

Q Would you point to them and identify them?

A The six gentlemen sitting here; Mr. Harding, Mr. Klein, Mr. Bacheller, Mr. Heimbach, Mr. Rudman, Mr. Green.

Q And you have testified that they were carried from the recruiting office outside?

A Yes, sir.

MR. LIPSON: For the record, the sergeant has both pointed and identified the six defendants in this case as the gentlemen that were escorted out of the building to the sidewalk.

* * * *

[fol. 72] Q Sergeant, what if anything happened outside on the sidewalk at this point?

A Once they were placed outside on the sidewalk they lied down for about a minute and then they came to a sitting position. Then they were asked several times by me—myself three times—to kindly get up and leave as the large crowd that had been witnessing this demonstration had started to gather around them. Now they gave no response and no indication that they would get up and leave. At this time the lieutenant who was present at the time they were sitting on the sidewalk, he himself asked them to leave, to get up and leave and they would not. He said well then you are all under arrest, because

a large crowd had gathered, they were blocking free passage of the sidewalk. The crowd started to get hostile. They started—

[fol. 73] Q Describe that?

A They started to shout things like "Let us get to them, we'll take care of them". There were two United States Marines. We had to hold them. We sent them across the street and also men from the Navy that we sent across the street. And the crowd did gather in around them. So it did start to get a little wild.

Q What was the approximate size of the crowd, sergeant, at that time?

A At that time I would say the crowd got to be within the neighborhood of eighty to one hundred people.

Q Sergeant, you testified that there were other police officers there. You know whether or not they were personnel from the crime laboratory at that time?

A Yes, there were. Officer Brennan from the crime laboratory and sergeant—I don't remember his name.

Q What if anything were they doing?

A They were taking pictures of the incident as it progressed.

Q Sergeant, were you there at the time the photographs were taken?

[fol. 74] A Yes, I was.

Q I'm going to show you a series of photographs here and ask you if you can identify them, what they depict?

(PHOTOGRAPHS WERE SHOWN TO MR. WEISGAL)

MR. LIPSON:

Q First, sergeant, I show you series of photographs here and ask you if you can identify what is represented on the photographs?

A Yes, sir. These are the pictures that were taken by our crime laboratory at the scene of the demonstration.

Q Were you present when all of these photographs were taken?

A I was at the detail, that's correct.

MR. WEISGAL: That doesn't mean he was present.

A If you mean was I—

THE COURT: This is police language. Explain what you mean, sergeant, by being at the detail when the pictures were taken?

A If you mean was I present when each and every one of these shots were taken and pictures were taken, no. [fol. 75] Not when each and everyone of them were taken.

THE COURT: Did you see the pictures taken?

A I saw them taken, yes.

* * * *

Q Sergeant, I show you here a photograph and ask you if you can identify it? Also ask you the approximate time that it was if you can state that?

A This is a photograph taken outside of the recruiting station immediately after the gentlemen were placed on the sidewalk.

Q What time would that be, sergeant?

[fol. 76] A This would approximately had been two, three minutes after five.

* * * *

MR. WEISGAL: That picture he states is approximately three minutes after five. After the men had been—

A Placed on the sidewalk.

* * * *

MR. LIPSON: I would offer it as State's Exh. Number two.

Q Sergeant, I show you another picture. Can you identify it as to its contents and approximate time?

[fol. 77] A This is a photograph of Mr. Rudman, Mr. Heimbach and Mr. Harding speaking to Sgt. Grumley of the recruiting office inside the office. The only thing I can say about this, these men entered at 3:20, approximately 3:20 to speak to the sergeant. So I would have to say this photograph was taken between 3:20 and 3:40.

MR. LIPSON: The State would offer this photograph as State's Exh. Number 3.

MR. WEISGAL: You would say 3:20?

A Yes, I would say between 3:20 and 3:40.

MR. WEISGAL: I have no objection, your Honor.

MR. LIPSON:

Q I show you another photograph, sergeant, and ask you if you can identify it and come up with the approximate time it was taken, if you can remember that?

A This is a photograph of several of the demonstrators picketing in front of the Army recruiting station. This photograph pictures Mr. Green, Mr. Bacheller, Mr. Rudman, whom I can identify and the only thing I can say about the time on it, it could have been taken—well I would say—

* * * *

[fol. 78] A This could have been taken anytime between 3:00 and 4:45, as all six defendants did not enter at the same time. They entered approximately 3:20 and some went out, came back in. I can only say between 3:00 and 4:45 while the demonstrating was going on.

MR. LIPSON: The State would offer this as State's Exhibit Number 4.

Q I show you another photograph and ask you if you can identify it as to time and content?

A This is a photograph of Mr. Bacheller and Mr. Klein and two other gentlemen who I don't know, demonstrating in front of the office and the time I could only give as the same as I gave on the other.

* * * *

[fol. 79] Q Sergeant, I show you another photograph. Can you identify it as to content and time?

A Another photograph of picketing in front of the Army recruiting office, and in this picture I can identify Mr. Heimbach and another gentleman who was in charge of the demonstration, Mr. Dewedowitz, who is not present in court.

Q Approximately what time was it taken if you recall?

A Between three and five p.m. that day.

MR. LIPSON: The State would offer this photograph as State's Exh. Number 6.

. . . .

[fol. 80] Q I show you another photograph, sergeant and ask you to identify it?

A This is a photograph of the inside of the Army recruiting office, picturing Sgt. Grumley of the U.S. Army recruiting service, Mr. Harding, Mr. Heimbach, Mr. Rudman, displaying a sign which they wanted the sergeant to display in the center next to the recruiting material. And this picture, the time would have to be between 3:20 and 4.

[fol. 81] MR. LIPSON: State's Exhibit Number 7.

Q I show you here another photograph, sergeant, and ask you if you can identify it as to content and time?

A It's a photograph of the picketing again being held in front of the U.S. Army recruiting office. On this photograph I cannot identify any of the people picketing. It was taken, like I said, between three and five.

MR. LIPSON: State's Exhibit Number 8.

Q I show you here another photograph, sergeant, and ask you if you can identify it as to time and content?

A This is a photograph of the crowd that gathered outside of the U.S. Army recruiting office after the gentlemen had been placed onto the sidewalk and this picture would have had to been taken about five minutes after five.

MR. LIPSON: State's Exhibit Number 9.

Q Sergeant, with regard to these photographs, State's Exhibits Numbers 2 through 9, do they accurately represent the scene at the time you saw them and the time the photographs were taken?

A Yes, sir.

Q Sergeant, we have gotten to the point where you [fol. 82] have testified that these people were on the sidewalk, is this correct?

A That's right.

. . . .

MR. LIPSON: For the record, the State has not concluded its direct examination of Sgt. DiCarlo who will [fol. 83] return to the courtroom tomorrow at 10 a.m. The State would reserve the right to put him back on the stand at which time Mr. Weisgal I am sure would like to cross examine.

* * * * *

LT. JAMES DiPINO,

* * * * *

DIRECT EXAMINATION BY MR. LIPSON:

Q Lt. DiPino, calling your attention to Monday March 28, 1966, did you go to the army recruiting station at 3328 Greenmount Avenue?

A Yes, I did.

Q What time, lieutenant?

A Approximately 2:30.

Q Now, calling your attention, lieutenant, to approximately 5 or five minutes before 5 on that date, tell his Honor and the ladies and gentlemen of the jury what if anything occurred?

A Well there had been a large crowd gathering about quarter to three. They started to come in and some of the boys were coming in and out of the recruiting station at that location. I did observe a number of them. They wanted to put up placards or place cards in the window but the recruiting sergeant refused.

* * * * *

THE COURT: * * * Mr. Udoff who is the Marshall stated a fact at the time—I'm sorry about that. The [fol. 85] Marshall who had charge of the inside of the place actually—we had no jurisdiction inside of the recruiting station at that time but I was just standing there so no trouble would start. The boys were all sitting around. In fact they had a girl come in once in a while and then come out and go in line. Five minutes of five o'clock they were told that they were going to close up and to leave. Now I was there when it was told. They refused to leave the place.

* * * * *

[fol. 86] A They were then told the place was going close, approximately five o'clock I would say. They were again asked to leave of their ownself, walk out, and they refused to go out. That is when the Marshall said in my presence he was giving us the right to help them escort the men out. They were picked up and deposited outside on the sidewalk.

Q Lieutenant, you say they. You see those people you indicate as they in the courtroom today?

A Yes, I think I see them.

Q If you do, would you point them out, please?

A It's the six defendants. I only know one by a name, Harding. That's the one with the glasses. One, two, three, four, five, six were the ones that were at the recruiting station, also around the area on the march.

MR. LIPSON: The lieutenant had referred and pointed and indicated the six defendants as the gentlemen that were in the recruiting station at that time, is [fol. 87] that correct?

A I'm sure.

Q What if anything happened at that point, sir?

A Well, I was one of the last ones to leave, to take the last one out. He was placed on the sidewalk. As the crowd gathered—it was a large crowd. In fact there was two Marines in the crowd. I told the two Marines to keep out of it and stay on the side and I put my arms out to protect them. They were sitting down and laying around.

Q Continue?

A They were sitting down and laying around in a circle.

Q Who was sitting and laying around in a circle?

A Six boys.

Q Once again the witness has pointed to the six defendants seated behind the trial table. Who were sitting and laying on the sidewalk.

Now, lieutenant, I'm going to interrupt you at this point to ask in what position, relative to the sidewalk, were these six boys located?

A Clearly, if I can remember as much as I can, one [fol. 88] was sitting up on the north side of the recruit-

ing station, one was in front of the station, one was on the south side, Greenmount Avenue and the recruiting area, one was toward the gutter, near the gutter, but on the pavement and the rest of them were laying in different positions.

Q When you speak of laying, what do you mean?

A Well when they were outside they laid on their back and then they sat up in a sitting position. I asked the people at that time, I really don't remember who were sitting where, but I know there were six defendants because I know they were the six that were inside—I asked them all to get up and move. They would not and I arrested them. I asked them once, I asked them twice. They wouldn't move. They started to sing. I said to the men "Don't touch them, wait until the wagon comes". I said "You're all under arrest". That's when the wagon pulled up and each one had to be picked up bodily and taken over, over to the wagon. The officers taken one side of their leg and back and the other one the other side and deposited across the street in the wagon.

Q Who was put in the wagon, lieutenant?

[fol. 89] A All six.

Q Once again, for the record, he has pointed and indicated all six of the defendants seated behind counsel table.

Lieutenant, approximately how wide is the sidewalk at that location?

A I'd say the sidewalk would be ten to twelve foot wide.

Q Approximately how much of the area of the sidewalk, the width you just described, were these people that were sitting and laying down covering?

A Practically the whole sidewalk in a circle. You couldn't go through. There was sort of a semi-circle because the crowd had gathered in a circle and were trying to get into them. In fact at one spot I had to put my hands out to protect these same people from being trampled.

Q You speak of a crowd. Do you have any indication or idea how many people were in this crowd?

A Yes. I would say it would be anywhere from fifty to one hundred and fifty.

Q What if anything were they doing while these people were on the sidewalk?

A They were protesting and the other ones were protesting against them.

Q Specifically what if anything was said. Do you recall?

A Yes. They said "Bomb Hanoi".

MR. WEISGAL: I object. This is hearsay.

THE COURT: The purpose of proving the possible results, probable results of the action. I think this becomes relevant. I'll therefore overrule your objection. What did you say now, lieutenant?

A I heard them say "Bomb Hanoi".

THE COURT: Who said that?

A The people in the crowd.

THE COURT: You don't mean the defendants?

A Oh, no, sir. They was the outsiders that gathered. It was such a large crowd. We had police all over the area, across the street. We were doing our best to protect these people from really getting hurt.

MR. LIPSON:

Q How many policemen were there on the sidewalk [fol. 91] at this time, lieutenant?

A On the sidewalk I'd say approximately eight to ten.

Q Where were they standing with regard to the defendants who were on the sidewalk?

A On the outside of them, trying to protect them so no one would come in on them. In fact at one time one of my officers directly in back of one person, O told him not to touch them, leave them alone. If they wanted to get up and leave they could leave. They wouldn't get up and leave.

Q Now can you describe how these people got to the sitting position on the sidewalk?

A Sir?

Q Can you describe how the six defendant got to the sitting position on the sidewalk?

A They were deposited there by us.

Q In what form or—

A Carried out, sir.

Q They were carried out?

A Yes, sir.

Q And when they were put down after being carried how were they put down?

[fol. 92] A They were dropped; carried and dropped right out.

Q Did they drop on their feet or dropped on their posterior, in what posture?

A I don't remember. I can only speak for the last one. I was the last one out with the last one. We put him on his feet and they went over and laid down. The last one did. Because I was in the back. The others were taking them out. The last one we deposited, he was put on his feet and he just laid down.

Q You know which one that was, lieutenant?

A No, I don't remember.

Q What if anything was said by any of the defendants as they were seated or sitting on the ground?

A I don't remember if they said anything. All I did was ask them to get up and they wouldn't get up.

Q Who did you address to?

A To the six defendants laying on the ground.

Q How close were you to them when you said this?

A I could have touched them on their head, the one on my side. In fact, like I said again, I reached with my arms outstretched, with two Marines behind me, to protect them from getting to them. In fact I even turned [fol. 93] around and said to the two Marines, "You stay out, it's none of your business", at that time, "get away from here". In fact I'm positive of that. I asked them again to get up and they wouldn't get up.

Q You speak of protecting the defendants from the crowd, Can—Why did you feel that you had to protect them?

A Well, I think—I can't say what I think, but at that time it was sort of a debate between these boys and some of the crowd that was walking and the outsiders. In fact I know from observing them they were going out

of line and going into conversation with another party, debating about the Viet Cong situation. I overheard it. I wasn't saying anything to them as long as they were peaceful. They were going back in line again. Some were going out again passing circulars, certain other ones. As long as the peace was not disturbed I wasn't doing anything about it.

Q With respect to the six that were seated on the pavement, you mentioned that you were there to protect them, is that correct? Why did you feel protection was necessary at that point?

A On account of the crowd was a little angry about [fol. 94] the whole situation.

Q Can you describe specifically these manifestations of anger already there than what you have done?

* * * *

A One man said "Let me get to them, I'll bust him in the mouth". I said "You'd better stay away, we'll handle the situation, we have enough police around".

MR. LIPSON:

Q Now, where, if you know, was Sgt. DiCarlo at this time?

A Sgt. DiCarlo was right in the circle near me at that time.

Q Did you overhear Sgt. DiCarlo say anything to the group?

A He also asked them to move.

Q Your witness.

CROSS EXAMINATION BY MR. WEISGAL:

Q Lieutenant, why did you go to that area 2:30 on Monday?

[fol. 95] A I was informed by my captain to have a detail placed there, there was going to be a march in front of the recruiting station.

Q In other words, the police had been informed that there was going to be a demonstration?

A Yes, they were.

Q As a result of that information you received you and how many police officers went up 2:30?

A Actually it was supposed to be one from the district. At the time I arrived there was about six officers with me besides Sgt. DiCarlo and myself. Sgt. DiCarlo and myself arrived at the recruiting station about 2:30 and about six more officers came from the detail at that time. All told, I'm not too certain at this time how many officers but I would say about twelve. But may I say this. Also across the street the Northeastern District, which I was unaware at that time, had sent officers. Also the traffic had sent some officers and we also had C.P. 11, which was an emergency car, was also there. But that wasn't my detail. My detail was my men from Northern District.

Q When you arrived on the scene, were there any [fol. 96] pickets there yet?

A No, sir.

Q To the best of your recollection, what time did the first group of pickets arrive?

A It was approximately quarter to 3.

Q About quarter to 3?

A Yes, sir.

Q Where were you when they arrived there at quarter to 3?

A I was in the recruiting station when I saw them arrive and I walked outside.

Q Approximately how many pickets came to the scene at that time?

A They were coming in dribbles. Two came, then three, then four.

Q In other words, let's say at 3 o'clock you would say there was approximately 15 pickets there?

A Yes, I would say there was about 15 pickets.

Q Of these 15 pickets, who were there, did it include the six defendants?

A Well I don't remember whether it included the [fol. 97] six defendants or not.

Q Do you remember when the six defendants arrived?

A Well I was made certain of the six defendants when they went inside to the recruiting station.

Q Approximately what time did they go into the station?

A Well I wasn't too sure of the time but I would say they were in there approximately an hour to an hour and a half.

Q They were in there an hour to an hour and a half? I want to know what time they went in?

A I would say about 3:30. I'm not sure of the time.

Q How many police were on the scene at 3:15?

A Well I had a detail of about twelve police.

Q Twelve police officers were there? And while these young men were in the recruiting station, the picketers on the outside were still marching around, is that correct?

A Yes, they were.

Q And were they carrying signs with them?

A Yes, they were.

Q And was a crowd gathering around these pickets?
[fol. 98] A The crowd—Well let's put it this way. When they were marching, people who were walking across the street, they observed the crowd across the street and came over to look, and as they were marching, some of the marchers were stepping out of line, they were giving out circulars to these people. One particular one objected very much to receiving the circular, sort of got in a little argument and we had to disperse that. As they started in, other people that would hear this debate, would come over and join in the debate also. You don't want me to tell you what happened, counsel? One was arrested during the debate—supposed to be some eggs thrown.

Q You know that had nothing to do with it, you know better than that, lieutenant?

A I know it didn't, but these were all the people that gathered and caused the disturbance.

Q You also want to tell them he was dismissed by the judge at Northern?

A Yes, he was dismissed.

Q While pickets were walking around outside there, obviously people were gathering as you state and the [fol. 99] pickets were still marching around, isn't that correct?

A Yes.

Q Everything was peaceful, wasn't it?

A I don't know what you mean by peaceful.

Q With the exception of this one man you arrested who was later found not guilty in Northern Police Station. Did you arrest anybody else?

A No. It was such a large crowd gathering that we had all we could do—In fact the picketers could hardly move one step at a time they were so bunched together and the people were pressing in.

Q What was the conduct of the people on the picket line? Were they acting in an orderly manner?

A I could say I had no trouble with them.

Q They were all carrying signs "Why Are We In Viet Nam?"

A I can't say they were all carrying signs. Some of them were carrying signs.

Q Now during this time you had no difficulty with the crowd or the people that were watching the picketing, did you?

[fol. 100] A Counsel, you don't want me to answer about the other things, so I can't answer.

Q You had no problems. Did you at any time attempt to disperse the crowd?

A Yes, many a time.

Q Did you send them away?

A I tried to disperse—not your crowd, no, but the other people to stay away.

Q And they left, didn't they?

A No.

Q The crowd?

A No, the crowd stayed on the outside of the fringe of the marchers until five o'clock when they were taken out.

Q Everything was orderly there, their marching, carrying these signs and you have testified—

A There was a little commotion previous to that as I told you before. You said to me I shouldn't have brought it up. Now if you want me to tell the truth, I'm telling you the truth. There was a little disturbance before that.

Q But this was someone who came there not involved [fol. 101] with these people?

A Yes, he was marching with them. He definitely was marching with them.

Q He was taken out of line though, wasn't he?

A No, he wasn't taken out of line. You want me to tell you? He went over, from what I understand, he wasn't taken out of line, he was going out of line and debating with people and going back in the line. He was marching with these people. And there was a disturbance before they were arrested. That's what I was trying to bring out.

Q Lieutenant, let's limit it to these six men and their actions and what they were doing and the crowd that was so hostile around there?

A Yes, sir.

Q For three hours these picketers were marching around outside of the recruiting station?

A Yes, sir.

Q And you told me you had no trouble with them, with any of these picketers?

A No, I had no trouble with these pickets.

Q Therefore you would have no cause to tell them [fol. 102] to leave?

A No, sir.

Q You stated that they were going around into the crowd, a number of these picketers, and were distributing leaflets?

A Yes, sir.

Q They were going right into the crowd with these leaflets? Isn't that correct?

A When you say a crowd, can I explain? These boys with some of the other protesters were actually marching in a circle. They took practically the whole pavement. Other people didn't go in with them but they were on the outside of this circle, pressing in.

Q Right?

A But it was in a circle. It wasn't a crowd bunching together.

Q You were in complete control of the situation, weren't you? You had enough police officers there. The pickets weren't giving you any trouble and if any of the onlookers became a bit obstreperous you would ask them to leave?

[fol. 103] A Counsel, I was there to protect them.

Q While you were walking around there, incidentally, lieutenant, did you see where the signs were being kept?

A I can't remember where they were kept.

Q Isn't it a matter of fact there was a tremendous batch of signs right near next to that recruiting sign? In fact there's a picture of it, isn't there? Some of the placards right down here.

A Yes, sir.

Q Isn't it true as additional picketers would come up to this scene of this picketing that they would go over, pick up a sign and continue marching around the crowd, rather with the pickets?

A You mean to say they were coming in every five minutes and picking up signs, is that what you are trying to say?

Q When it started it was fifteen pickets. At the end, at five o'clock, according to your testimony before, you said there was somewhere in the neighborhood of thirty-five or forty?

A Well as far as the signs were concerned, I don't [fol. 104] remember, but they were bringing signs with them in their arms.

Q People were walking into the line, walking through the crowd, picking up signs and going ahead?

A I don't remember actually.

Q But there were thirty-five or forty people?

A But I don't remember them picking up signs every minute and going in line. They may have come and picked up a sign and walked in but I don't remember them giving them out every minute.

Q You do remember though a number of picketers going around and handing out leaflets to the crowd?

A Yes, I do.

Q Now, lieutenant, you used the word 'deposited', when you say the men were deposited on the pavement outside. After five o'clock the men in the recruiting office were removed from the recruiting office, is that correct?

A Yes.

Q Did you see any of the men thrown on the pavement?

A To my recollection, when you say thrown, I don't [fol. 105] know what you mean. They were taken out and put on the sidewalk. They may have been dropped. If you are talking about taking them out and dropping them, I didn't see that but I know the last one I had, I put down on the sidewalk.

Q You said before in your direct testimony they were carried and dropped?

A Deposited on the sidewalk.

* * * *

Q Will you differentiate for the jury the difference between being dropped and being deposited?

* * * *

A You want me to answer that? When I said deposit, I mean they were carried out and put down. I don't know, if you call deposit to drop from a height about [fol. 106] that much, maybe they were.

MR. WEISGAL: Show that to the jury. Stand up and show that to the jury.

A They were dropped of a height of about that much I'd say deposit. They were carried out,—if I can demonstrate?

* * * *

Q Where did you hold them?

A One was here and one was here and one on the other side, carried out. If they were here and they dropped them there, they could have dropped them but I remember the last one I had, when I brought him out, I had him here like this and we put him down feet first and he went and laid down.

THE COURT: That's a question I think counsel wanted to have you answer. Did you bring them out feet first or drop them in some other fashion?

A Your Honor, when I said deposit I said that I was [fol. 107] in the back, the last one to come out. When I brought mine out I deposited him on his feet.

THE COURT: Then he went down?

A Then he went down.

THE COURT: In response to the law of gravity, not making any effort to stand up?

A Yes, sir. When I asked them to get up they wouldn't get up. They got up in a sitting position. I asked them twice. They started to sing. Then they started to sing. I said "Wait" to the men "wait until the wagon comes". I said "If you don't get up you're under arrest". They wouldn't get up; they were under arrest.

MR. WEISGAL:

Q Is there any possibility these men did not hear you say get up?

A No, sir.

Q What was the crowd doing at this time?

A Well the crowd was pushing in.

Q What had happened to the pickets, the people who were then carrying these signs "Stop IN The Name of Love", "Why Are We In Viet Nam?", "Let's Get Out [fol. 108] of Viet Nam", and all of the other various signs?

A Well my recollection is they were trying to march and couldn't march through them because they were stopped in a group in a bunch. In other words, it became a circle where these men were sitting, sitting around, laying down. There was a complete circle and among this circle was some of their own people with the outsiders who were all grouping in.

Q In other words, a circle formed around all of the six people who had just been—

A Just laid in a semi-circle, in a circle.

Q When you say they laid in a circle, they were dropped one on top of the other and they had to lie there for a few minutes before they could even sit up, isn't that correct?

A No, sir. No, sir.

Q That's not so?

A No, sir.

Q You mean—

A They had ample time to get up. I gave them plenty of time to get up.

[fol. 109] Q You gave them plenty of time?

A I asked them twice. They didn't want to get up.

Q At this point you say the crowd was becoming very unruly, the crowd was shouting "Bomb Hanoi", is that correct?

A I don't know what you mean by unruly. I know they were pressing in. I told you again I had two Marines behind me I had to stop from coming in.

Q What did you do to disperse the crowd, anything?

A Actually we had all the police holding the people back from getting into them.

Q You were holding the people back? Were the people actually trying to get into them?

A At one time I had my hands back and I dispersed the two Marines and stayed up in a position, like this, and my men were out there holding them back so nobody would come into them to do them bodily harm.

Q Were the Marines very angry?

THE COURT: Marines you say?

A Two Marines.

MR. WEISGAL: He said there were two Marines.

[fol. 110] A Well by the color of their face and seeing how pale they turned I'd say they were very angry.

Q Would you say standing next to the Marines were a group of picketers holding signs, also protesting the war in Viet Nam?

A I'd say they were mixed.

Q Right. Therefore these people, lots of picketers were right next to the Marines and in fact the crowd had not, the picketing had stopped completely, isn't that correct?

A They couldn't march.

Q They couldn't march because you just dropped six men right out in the middle of the sidewalk, isn't that correct?

A No, sir. They couldn't march because these six pickets wouldn't get up.

MR. LIPSON: Once again he has pointed to the defendants seated behind the trial table, identified them.

MR. WEISGAL:

Q How did you tell them to get up? When is the first time you told them to get up?

A When they were lying in this circle; one here, [fol. 111] one here, one here and one here, I was like this. I said, "All right, come on, get up".

Q Wait a second. They were all lying around in front of the recruiting office, they weren't on top of one another?

A No, sir.

Q They weren't bunched together?

A No, sir.

Q They were at no time thrown on one another?

A I don't know if they were. You asked me that before. I told you I was the last one out. I know they were deposited outside. They all took a position in a circle.

. . . .

Q What was their language at the time they were being taken out?

[fol. 112] A Nothing. They didn't want to go out of the place. They were asked to leave. They didn't say nothing.

Q They said nothing, is that correct?

A Yes, sir.

Q They at no time used abusive language toward the police?

A The only thing they said, they were asked—You want me to answer the question? "We're not going out, we have a right to put cards in your window as well as you are about being for the other side".

Q One of the men said that?

A Yes, sir.

Q He said he thought he had a right—

A They had a right to be in there. They were told to leave at five o'clock, the place was closed.

Q We're outside now.

A They were put outside.

Q I asked did they use any obscene language?

A No, I never heard anyone use abusive language to the police.

Q When is the first time you told them to get up?

[fol. 113] Q When I was the last one to come out. When I came out they were laying down around the sidewalk. The crowd started gathering. I asked them to get up.

Q Did you direct it to anyone in particular?

A The whole group. I couldn't go to each one separately, touch them on the shoulder and say all of you get up. They were all in close formation, which was a circle, a circumference from that end of the bench right around here. That's how big the circle was.

MR. LIPSON: Indicating a diameter of about eight feet.

A About that. I asked them to get up and I asked them twice. They were not on top of each other.

MR. WEISGAL:

Q Right. At this time they were not on top of each other?

A I don't know what you mean at this time. When I was out there they were all scattered in a circle.

Q What was the crowd doing at that time?

A All in a circle

Q Forgetting about the demonstrators or the pickets, [fol. 114] what was the crowd doing at this time? You said there was something about "Bomb Hanoi".

A They were hollering "Bomb Hanoi". In fact I told you again about the two Marines.

Q Let's stop there. The crowd was shouting "Bomb Hanoi". Was it loud?

A Yes. I heard it.

Q You heard it. Now could it have been so loud so they could not have possibly heard you say get up?

A No, sir; definitely not. In fact I had my arms almost on top of one when I said it.

Q Who?

A I don't remember. But it was one of the six defendants. I asked them to get up and move. We didn't want to lock them up, we wanted them to get away, to clear the streets so people could walk. I asked them again. I said to my officers, "Don't touch them, don't put a hand on them. If the wagon comes, they still refuse to move, we'll have to go". In fact they wouldn't get up, we had to carry each one separately.

Q I understand that. When did you tell them they [fol. 115] were under arrest?

A After the second time, I said they were going to be put under arrest.

Q This is what I'm trying to get, when is the first time you told them after they had been taken out of the recruiting office?

A Approximately 5 o'clock when I went out. It could have been within two to three or five minutes, inbetween that time. I don't remember.

Q You told them to get up?

A Yes, sir.

Q You say you were talking to all of them, is that correct?

A Yes, sir.

Q Then when is the next time you told them to get up?

A When I seen there could be violence. Again I asked, when I seen the two Marines that were pale in their face, why if they're not going to get up they can be hurt. I asked them again. They still wouldn't get up.

Q Who were these two Marines standing next to? [fol. 116]

A I don't know who they were.

Q Suppose I were to tell you one Marine was standing right behind a man carrying one of the signs?

A It's possible. I said they were intermingled.

Q Look at this picture now, lieutenant. It shows you—this was taken by you department. This is Exhibit Number two. There you are standing there. There is one of the men carrying a sign. This is a man in uniform standing there?

A Yes, sir.

Q Now obviously if this man is anxious to do some harm he had this man right next to him. There—

A There was another Marine with him. This boy went up ahead of him. There's another Marine back—

Q It shows these men were down on the ground?

A Yes. Here is the—here is one here, one here and one man back in there.

Q What are these men on the ground doing that is creating a disorder at that time?

[fol. 117] A Well, your Honor, from what I seen and I seen these men laying on the sidewalk where nobody could go through them, other people are moving in to do bodily harm, in my opinion it was disorderly conduct. We gave them ample time to move, to clear the sidewalk. They obstructed practically the length of the sidewalk from the recruiting office to the gutter and there is no one could get through. In fact, like I said before, when I seen the crowd closing in I arrested them also to protect them from being hurt.

MR. WEISGAL:

Q The crowd was shouting "Bomb Hanoi", the picketers were singing "We Shall Overcome", is that correct?

A Is that what they were singing? I don't know.

THE COURT: Did you recognize the tune?

A Your Honor, I'd say at that time I was pretty busy.

MR. WEISGAL: At this point the crowd and the [fol. 118] picketers are all together, isn't that correct? They are completely intermingled, the entire crowd?

A They are not completely intermingled.

Q Look at this picture.

A I don't say a whole crowd. You say a few, yes, not a whole crowd. I say a few was intermingled. This doesn't show the whole crowd.

Q How many people were there at that time?

A Fifty to one hundred and fifty people.

Q Would you say that forty to fifty of them were picketers?

A I didn't count them. I'd say about thirty-five.

Q How would you describe this crowd, lieutenant?

A Hostile.

[fol. 119] MR. WEISGAL:

Q You would describe it as hostile?

THE COURT: Hostile to whom?

A As I said before, I can answer, I have nothing to hide. This crowd, I was afraid this crowd might injure these boys and the rest of them, they were debating back and forth about Bomb Hanoi and different things and I had to be out there to protect these people because they wouldn't leave. When they were sitting down they refused to get up and they were creating a disturbance because people were coming from all over, from across the street.

MR. WEISGAL:

Q Now, lieutenant—All right. What attempt did you make at this time with all of the officers you had there to disperse this crowd?

A We had the officers in a circle dispersing them so we could push them back and hold—If you could see some of the pictures, if you were there—

[fol. 120] MR. LIPSON: If there are extra pictures the State's Attorney doesn't know about it.

MR. WEISGAL:

Q Were there any fights among the crowd after the men—Now I'm directing your attention now to after the men had been put out on the pavement. Were any of the other demonstrators attacked?

A No, sir. To my knowledge, no, sir.

Q Were there any fights any place in the crowd?

A No, sir.

[fol. 121] Q Singing some tune?

A Yes, I said they were singing.

Q You mean to tell me you haven't heard "We Shall Overcome" from all the time—

A Counsel, I said before I was pretty busy.

Q You said you told them twice to get up and you said you heard Sgt. Di Carlo also say to get up?

A I don't remember how many times Sgt. DiCarlo said anything to the boys. I heard DiCarlo ask him, he [fol. 122] was alongside of me. I asked them twice myself.

Q Lieutenant, I guess really the one point I'm driving at, did you warn all of the pickets, demonstrators if they didn't get up they would be arrested?

A Well again I'll say that I was in such a small circle, I said it loud enough for everyone to hear me.

THE COURT: What did you say. That's what counsel asked?

A I told them to get up, if they wouldn't get up I said before somebody gets hurt—I said it again if you don't get up the second time I'm going to have to place you under arrest.

MR. WEISGAL:

Q Did you just say it like that? Was it said one right after the other?

A Maybe a minute or two, I don't remember exactly. But it was the first time I said because I even said to my officers, don't touch them, give them ample time to get up. They wouldn't get up, they just laid there. I said it twice, I remember it distinctly and I said it loud enough for them to hear me.

[fol. 123] Q Now you say the crowd was hostile. Were there any—

A I said they were hostile, yes.

Q Can you attribute this hostility to any of the actions of the defendants?

A Yes, they were protesting against them. They didn't like what they were giving out in literature.

Q They didn't like what these people were giving out?

A Yes, sir.

Q That's why the crowd was hostile?

A When I made a remark, hostile, I took it for granted because of the Marines how his face was and how he was coming in. I asked him don't get into it. I figured in my mind the crowd was hostile. In fact I'll be real serious with you, I thought the boys may get hurt if they continued to lay there. When I asked them to move they wouldn't move. Even by their own people because they would have been stepped on if they kept marching.

Q The picket line had already ended, we agreed on that?

[fol. 124] A No we didn't. They tried to picket and couldn't. They couldn't move on account of they were laying in a circle.

Q We have got this picture here identified as 5:05. You will admit, will you not, lieutenant, that it is impossible for the pickets to certainly move in this type of an area?

A But they—

Q Just give me a yes or no?

A But they tried to picket and they couldn't move on account of the defendants laying down.

Q They were still holding their signs, weren't they?

A Yes, sir.

Q They were mingled in with this crowd?

A In fact they had one girl with a baby we had to almost protect from her getting hurt. She was marching with a couple of babies in that crowd. We had to have the officer stay so the little children wouldn't get hurt.

.

[fol. 125] Q In this picture here all of the police have their back to the crowd, is that correct?

A Not all of them. We have two here going this way.

Q Where?

A This isn't the contingent of the Police Dept. We have police on the outside of here. This is some of my men here.

Q We can see one, two, three, four, five, six, seven,

eight police right there. All of them are looking at the [fol. 126] pickets, is that correct?

A No, they're not. Here's one man looking out that way.

Q That's you?

A No, this man. This man. I'm looking out that way, looking over the fringe of the crowd, see that nothing happens. That's what I was doing.

Q You have got your hand behind your back. Here's a soldier standing next to a picket?

A This picture does not show my previous action. I was trying to tell you my previous action that I reached across this crowd and tried to tell them to leave and that's when this other picture was taken after I had reached the crowd. I had already asked them to get up before that picture was taken.

Q What I'm getting to, weren't the picketers and the crowd now completely mixed up, they were standing next to one another?

MR. LIPSON: Your Honor, I would still object. The question has been asked I don't know how many times and the answer given.

[fol. 127] THE COURT: I have an objection before me. I think the question has been answered but I'll permit it one more time. The question simply is, lieutenant, as I understand it, at the time that picture was taken, whenever it was, at that particular time now, the pickets and the crowd that had been menacing them or was menacing them was pretty well confused with, one with the other, is that correct?

A Yes, sir. Some of the crowd was intermingled in the front but there was a bunch of the crowd on the outside that wasn't. The pickets were all in a group inside, most of them, and the few that was outside were intermingled with them. He asked me if all of them were. They were not all. There was some but not all.

* * * *

MR. WEISGAL:

Q What specific action did the defendants commit

[fol. 128] that made the crowd hostile? What did they do, in other words, in any way made the crowd hostile?

.

A I don't know. Like I said before, if you want me to repeat—by looking at the Marine and seeing how pale he was. It was one of the indications he was angry.

[fol. 129] Q Angry about what?

A Of what was taking place, he was against. Like I said to you before.

Q You said the fact these people were protesting the war in Viet Nam and—

A And he was a Marine, yes.

Q The crowd was hostile for the same reason?

A I said I didn't know.

Q Maybe the crowd wasn't hostile, was it?

.

A I I have seen a lot of crowds. When I say I asked these boys to move more for their protection I was only looking out for their portection. When they were laying around and wouldn't move, believe me I did lock them up for their protection.

Q MR. WEISGAL: In other words, you were protecting them against what?

A Being hurt or trampled from the crowd.

Q By whom?

[fol. 130] A I said by the crowd.

Q Why?

A Because they refused to move. They were all over the sidewalk.

Q You mean the crowd was mad at them because they wouldn't move?

A Because they were marching in protest.

Q About what?

A About the Viet Cong. Against the recruiting station for not allowing signs. I was only there to preserve the peace, counselor. I don't take sides.

Q I understand that. At any time did you give orders to your other officers to disperse the crowd?

A The officers were told to keep the crowd back as much as they can and hold them back so no one would

be hurt. Actually I didn't tell them but they know that from experience.

Q Who gave them, who specifically ordered to disperse the crowd? You didn't get anyone to pick up one of these microphones and say, all right, everybody move along, its all over, just move along?

[fol. 131] A After they were placed in the wagon we dispersed the whole crowd.

Q Not until after they were placed in the wagon? At that time, in other words, there is no need for a crowd any longer. Prior to that—

A I'll answer to the best of my ability. Even your own people who were marching wouldn't disperse.

Q How many officers did you have there?

A I said I had twelve, plus the Northeast had sent some over from the other side. The Traffic had sent a man up there and we had C.P. 11.

Q Actually you could have gotten more officers if you needed them, couldn't you?

A I guess we could have, yes.

[fol. 133]

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[fol. 134]

LT. JAMES DiPINO,

FURTHER CROSS EXAMINATION BY MR. WEISGAL:

Q Lieutenant, in your testimony yesterday you stated that it took approximately from two to five minutes after the defendants were arrested to remove them to the paddy wagon that was located across the street from [fol. 135] the recruiting station, is that correct, sir?

A I thought I said from one to five minutes.

Q I'm not trying—Fine. How were the defendants taken across the street?

A They were picked up and carried.

Q They were picked up and carried and placed in this patrol wagon?

A Yes, sir.

Q Now who called the patrol wagon, lieutenant? Was it you or one of the other officers?

A I don't recall. All I did was tell them to call the wagon. I don't remember who called the wagon. I didn't. I told them to call the wagon but I don't know—

Q Approximately when did you tell them to call the wagon?

A After I told them twice to get up.

Q After you told them twice?

A They refused to get up. I said, let them alone. One of the officers was going to take hold. I said, "keep your hands off". They refused to get up. I said "O.K., call the wagon".

[fol. 136] Q You know where the wagon came from?

A No, I don't.

Q Would you assume—Well when you say call the wagon, you would assume you told them to call Northern Police Station?

A Oh, yes.

. . . .

MR. WEISGAL: Well I would accept either radio call or telephone call from the lieutenant, who then says to someone, call for the wagon. Isn't that correct?

A Well I'm not sure whether we had the wagon in the neighborhood or not. I'm not too sure whether we had the Cruising Patrol cruising or not.

THE COURT: How do you put the radio calls in?

A Radio car. For the Cruising Patrol all you do is pick up the mike and call for the wagon.

. . . .

[fol. 137] Q You assumed that the wagon was called, is that correct?

A That is correct.

[fol. 138] Q If you would tell someone to call the wagon, they would call the police station to which you are attached, is that not correct?

. . . .

A No, not necessarily. We have radio cars in the

area, you just pick up the mike and just call for C.P. 5, to a certain location.

MR. WEISGAL:

Q What does C. P. 5 means?

A That's the wagon assigned to Northern District.

Q Meet you at—In other words, you called Northern Police Station? You surely wouldn't call Sourthern, would you.

A No, sir, we do not call Northern Police Station. That's right to communications, sir.

Q Lieutenant, you know exactly what I'm saying. You call communications and the call goes to Northern Police Station?

A No, because the Cruising Patrol is cruising. They do not have a stationary position in the stationhouse.

[fol. 139] Q The paddy wagon is cruising?

A Yes. That's why it's called the cruising patrol.

Q It was after you told these men they were under arrest after, all six were out on the pavement, that you called the paddy wagon, is that your testimony?

A After the second time.

Q After the second time?

A I asked them to get up. I says, call the wagon.

Q Incidentally, you are attached to the Northern Police Station?

A Yes, sir.

Q All the officers there were attached—

A No, sir, they were not all attached to Northern.

Q With the exception of the U.S. Marshall?

A No, sir, they were not all attached to Northern.

Q They weren't?

A No, sir. I stated that the Northeastern District had sent some officers that were across the street and also Traffic and C.P. 11, which is assigned downtown to the Riot Squad.

Q The bulk of the officers though came from the [fol. 140] Northern Station? Strike that question. What district is the recruiting center in?

A Northern District, sir.

Q Thank you, sir. No further questions.

THE COURT: What district is on the opposite side of the, of Greenmount Avenue?

A Northeastern District.

THE COURT: Does that clear up that problem, Mr. Weisgal.

* * * *

[fol. 141] SGT. JOSEPH DiCARLO,

having previously been sworn according to law, was recalled to the stand and testified further as follows:

* * * *

(The last question asked by Mr. Lipson was "What if anything happened at the point that both you and Lt. DiPino arrested these men?" Objection by Mr. Weisgal)

THE COURT: Objection is overruled.

A When we addressed these men and asked them to [fol. 142] get up and leave, we got no response, and I myself asked them again to get up and leave and still there was no response. This is as they were sitting on the sidewalk in front of the Army recruiting station in a circle. The third time I said "Gentlemen, if you don't get up and leave we are going to have to arrest you", and they did not answer. So with this the lieutenant says "You're all under arrest", and at that point we called the wagon and they had to be carried bodily from the pavement to the wagon. We asked them to walk and we didn't get any response from them at this point either.

MR. LIPSON:

Q Now, sergeant, you speak of individuals being carried from the sidewalk in a laying or sitting position on the sidewalk to the wagon. How many were there, do you recall?

A How many were arrested?

Q Yes, how many were arrested and how many had to be carried from this position on the pavement to the paddy wagon?

A The six defendants.

Q The six defendants. You see those six defendants [fol. 143] in the—

A I did not see all six of them being carried. I did not carry any myself. I went over to the wagon with the first group of officers who was carrying the first person arrested and I went over to the wagon and stood there.

Q Do you see the six defendants who were laying on the sidewalk in the courtroom today?

. . . .

A Yes, I do see the six men that were sitting on the sidewalk.

. . . .

Q What was the position or positions of the six individuals that you referred to on the sidewalk?

[fol. 144] A At what time? At the time of their arrest or when they were first placed on the sidewalk?

Q Starting when they were first placed on the sidewalk?

A When they were first placed on the sidewalk they lied down for about a minute. Then they came to a sitting position. Now the six men that were in the sitting position on the sidewalk are in court and they are the six defendants here if you wish me to identify them by name. Mr. Harding, Mr. Green, Mr. Heimbach, Mr. Klein, Mr. Bacheller and Mr. Rudman.

MR. LIPSON: For the record, Sgt. DiCarlo has pointed to and identified by name the six defendants seated behind the trial table who were sitting on the sidewalk at the time of their arrest.

. . . .

Q Now, sergeant, can you establish an interval of time from the time that they were first placed on the [fol. 145] sidewalk until the first warning to get up?

A Well it would just be a matter of a minute or two because when they were first placed on the sidewalk, that is when the crowd started to come around and we had police officers there holding back the crowd and some of the picketers who were at the scene also. Probably

just a matter of a minute or two because we wanted to get them up and out of there as soon as possible.

Q Can you establish the time interval between the first warning and the second warning?

A Minutes? It was almost one right after the other. I think all three warnings must have been given within a matter of a minute. The first time I asked them, I says, "Gentlemen, let's get up and go now". They didn't respond and I said "Come on, let's get up and go". Still no response. I said "If you don't get up and go you will all be arrested". Just about that time, maybe thirty seconds, no more than a minute.

Q With regard to the crowd, sergeant, what was the position of the crowd with relation to you and the six men on the sidewalk?

[fol. 146] A Well the six men were sitting on the sidewalk in a circle. The crowd—I was facing the north. Now the crowd started to come from, were facing me—In other words, they were facing south and out in the street along the gutter and some up behind me too.

Q Now you speak of the police officers being around a semi-circle, is that correct?

A Yes, trying to hold back the crowd, or protecting the demonstrators and at the same time holding back the crowd.

Q What if anything was the crowd doing at this point?

A Well they were pushing closer and they were making some remarks.

Q What type of remarks? If you recall?

A As I recall I do remember one remark, two remarks coming from the crowd. I don't know who made them but the remarks such as "Let us take care of them", "Let us at them". These are two remarks. "Let us take care of them", and "Let us at them". This is not word for word.

Q At this time, that being the time these six men [fol. 147] were on the sidewalk, did you have occasion to address or warn, have any communication with any members of the crowd other than the picketers or six defendants?

A Me personally? I did not talk to anyone in the crowd, no. But there were two U. S. Marines that were pushed back—not pushed back but asked to go to the other side of the street.

Q Why were they asked?

MR. WEISGAL: You mean by you?

A No, sir, not by me.

MR. WEISGAL: How can you ask him this question?

A I did not talk to anyone in the crowd personally, no, sir.

MR. LIPSON:

Q Were you in the presence of whomever asked the Marines to move?

A No, sir, I was not.

Q Approximately how far or how close were you to anyone or all of the defendants when you asked them to get up?

A I was standing right in back of them. In fact they were sitting in a circle and I was standing in back of [fol. 148] one or two of them. But which one it was I don't know but I was right behind them, exactly right behind them.

* * * *

CROSS EXAMINATION BY MR. WEISGAL:

* * * *

[fol. 149] Q Sergeant, how many times did Lt. DiPino tell the defendants to get up, if at all?

A I don't know exactly how many times he told them but I do distinctly remember one time.

Q You do distinctly remember one time. Now why, if [fol. 150] you were standing there in the circle wouldn't you have heard every time the lieutenant told these men to get up, if he told them to get up?

* * * *

A At the time I was also busy holding back the crowd and I was also asking the defendants to get up.

MR. WEISGAL:

Q Therefore it's your testimony that you're holding

back the crowd—Well, let's stop there. Would you show me how you were holding back the crowd, in what manner?

A With my arms.

Q You were holding back with your arms. Was your back to the crowd or were you facing the crowd?

A My back was to the crowd.

Q Your back was to the crowd. So as you were holding back the crowd you obviously could face Lt. DiPino, isn't that correct?

A Yes.

Q Therefore I ask you again how many time did he tell the defendants to get up?

[fol. 151] A I know of one time.

Q How many time did you tell the defendants to get up?

A Three.

Q Three times? Three times within the space of what, what time?

A I guess it would have been all said within a matter of maybe thirty seconds, forty-five seconds.

Q Your testimony before was "Let's get up and go", is that correct?

A That's right, sir.

Q Nothing happened?

A I said "O.K. fellows,

Q "O.K. fellows, let's get up and go" [fol. 152] said "O.K. fellows let's get up and go". Then you while you're holding back the crowd and you are telling these fellows to get up and go, is that correct?

A That's right, sir. I wasn't alone, Mr. Weisgal, I had other police officers.

Q You're saying this crowd was very hostile?

A Yes, I would say they were.

MR. WEISGAL:

Q Were you asking them to get up and go into this hostile crowd?

A If they would have got up and gone, we would have escorted them to the car just as we did some of the other picketers who did leave at a later time.

Q Escorted them to the car?

A Yes.

Q And by escorted them, what do you mean by escorted them to their car?

[fol. 153] A Walked them to their automobile and seen they would have gotten away from there without any trouble, because we did this with some of the other picketers.

Q You did this?

A Yes, we did.

Q When was this, sergeant?

A At the end. After the defendants were arrested and gone into the station in the wagon, there was a crowd still milling around and there were some of the picketers still carrying sign and my men and I, men on the detail and myself, walked some of them across the street. If you are familiar with that area there is Judge's Bar across the street. There was two picketers had their car parked on the side street.

* * * *

[fol. 154] Q Who was the first person according to you, sergeant, that asked the defendants to get up?

A I don't know whether it was I who was first or the lieutenant was first, sir.

Q Who made the decision to arrest these men?

A Well, as I said before, after we told them to get up for the third time I said if—

Q Not we—now excuse me—

A Excuse me.

Q Right.

A I said that if you don't get up and leave you will all be under arrest, you will all be arrested. At this point Lt. DiPino said "You are all under arrest".

Q Who said "Call the wagon"?

A It could have been any number of about ten police [fol. 155] men that were there around the circle. I imagine the lieutenant did. I didn't call.

Q How long did it take before the wagon arrived?

A The wagon was one block away. We had it stationed around the corner.

Q How was the wagon called?

A This I don't know, sir. I don't know whether they used radio to call them or one of the officers went up to the corner and called them. I don't know.

Q How long did it take for the wagon to arrive?

A Not very long.

Q How do you know the wagon was around the corner?

A We had it stationed there.

Q Why did you have it stationed there?

A In the event there was any trouble.

Q Isn't it a fact you called the wagon when the men were in the recruiting station. Is that not a fact that the wagon had already been called?

A No, sir. The wagon was stationed one block away throughout this demonstration.

Q How many wagons?

[fol. 156] A That I know of there was Cruising Patrol 5 which is a cruising patrol assigned to the Northern District and I believe C.P. 11, which is an emergency wagon.

Q You had two wagons?

A Well C.P. 11 doesn't normally transport prisoners. One wagon I know of transports prisoners, C.P. 5.

Q Was that cruising the area?

A Yes, just around the block. It was stationed up at the corner at the next intersection. I believe it would be 35th Street.

Q Isn't it a fact the wagon had been called by either you or the lieutenant when you were in the recruiting station?

. . . .

A Let me say this, counselor. Not by me.

[fol. 157] MR. WEISGAL:

Q All right. Now were there any police officers at any time holding on to any of these men while they were sitting in the circle?

A What time do you mean, prior to their arrest? While they were sitting in a circle?

Q While they were sitting in the circle?

A Holding them?

Q Yes?

A No, sir.

Q No police officer at all?

A No, sir.

Q After they were told they were under arrest, what happened? Did the police officers then go and hold them?

A After they were told they were under arrest, I would imagine, I don't remember, but I would imagine the police did hold on to them at that point, yes.

* * * *

[fol. 158] Q How were the men taken out of the recruiting center, sergeant?

A I believe I stated in my testimony yesterday that they were carried out by U.S. Marshalls and police officers.

Q By U.S. Marshalls and police officers? Each one by the same U.S. Marshall?

A No, sir, different Marshalls, different officers.

Q Different Marshalls and different officers. When you say carried out, does that mean they were carried, held by the arm and by the leg, one man on each side?

A I can only speak for the one I carried, Mr. Weisgal, and he was carried by his arms and legs.

Q When you got on the outside, sergeant, what did you do with them?

A He was deposited on the sidewalk.

Q When you say deposited, you mean you and the marshall then lowered him gently to the ground or did you drop him?

* * * *

[fol. 159] A He was placed down. Like I said I had him by the arm and leg. His legs entered the door first and the one that I carried was placed down on his feet and he didn't stand on his feet, he went right down to the pavement in a lying position.

MR. WEISGAL:

Q Now how quickly were the men removed from that office?

A How quickly?

Q Yes? How long did it take to remove all six of them?

A A minute or two, I would imagine.

Q All six were removed in that manner, is that correct?

A Again I say that is how I removed the one I carried, Mr. Weisgal.

[fol. 160] Q Do you remember whether you removed the first, second, third, fourth or fifth?

A Well I would have to say about the third one. Second or third.

Q Did you remove Harding, Green, Heimbach, Bachelor, or Rudman?

A I don't remember.

Q You remember their names perfectly.

A Certainly I do. I saw them three other times in court.

Q Three other times in court?

A That's right. Two postponements.

Q And one other time in the lockup?

A Yes, sir.

Q When you asked each one to stand up and face you so you could remember their names?

A I did that.

Q Right. Now the man that you deposited on the outside, can you remember whether there were two or three men before this or none?

A I really don't remember, Mr. Weisgal. I know there [fol. 161] were one or two there. It wasn't none.

Q But you didn't throw anybody out of that door, did you, sergeant?

A No, sir, I did not know throw anybody out.

Q You didn't drop the man?

A That I carried?

Q Yes?

A No, sir.

.

Q Did you see anybody throw any of the defendants or drop any of the defendants?

A No, sir.

* * *

[fol. 162] Q What did you do after—You say you placed him on the outside. Did you then go back into the recruiting center?

A Yes, sir.

[fol. 163] Q To do what?

A To see if I could be of any more assistance.

Q Were you of any more assistance?

A No, sir.

Q That's when you went outside?

A Yes, sir.

Q That's when the men were lying on the ground flat on their back?

A No, sir.

Q It wasn't? When was it?

A When the men were placed outside the door, this is when they laid on their back. I went back—In fact I never left—

* * *

A When they were placed outside on the sidewalk this is when they laid on the pavement. I went back to see if I could be of any more assistance. I could not and then [fol. 164] again returned to the sidewalk and the men were in a sitting position.

MR. WEISGAL:

Q Now its your testimony that you placed a man on his feet?

A I did not say on his feet. I said feet first.

Q Feet first? In other words, you put him down on and angle like this?

A Could have been.

* * *

Q Would you show us the angle on which you placed this man?

THE COURT: That I'll permit, if you can, sergeant? Can you?

A I don't think I can show the exact angle, your Honor, that I placed the man down. My man went down, he [fol. 165] didn't stand on his feet. He had all the opportunity but he did not.

MR. WEISGAL:

Q Sergeant, were you there the entire time from let's say—Let's change the question. What time did you arrive?

A Approximately 2:30.

Q Were there any pickets there then?

A No, sir, not at that time.

Q The pickets arrived at approximately what time?

A About three o'clock.

Q The picketers kept getting larger and larger all day, is that correct?

* * * *

A It reached the point where there was about thirty to thirty-five, including women and children, and that was the—

MR. WEISGAL:

Q Were they all carrying signs?

[fol. 166] A I would have to say mostly all of them, except one woman who had two small children, one in a stroller.

* * * *

Q You carried the man out of the recruiting office, is that correct?

A Yes, sir.

Q You and a marshall, is that correct?

A Yes, sir.

Q And there was one man holding his arm here,—rather you were holding an arm and a leg, is that correct, and a Marshall was holding an arm and a leg, is that correct?

A Yes, sir.

Q Now tell us how wide that door is at the recruit-[fol. 167] ing center?

* * * *

THE COURT: Do you know how wide the door is, sergeant?

A By actual measurements, no, I don't.

* * * *

[fol. 168] THE COURT: All right. Any redirect?

MR. LIPSON: No, your Honor, there is no redirect. At this point the State rests its case in chief.

* * * *

[fol. 169] (CONFERENCE IN JUDGE'S CHAMBERS)

THE COURT: Let the record show that counsel for the defendants has filed pleadings called "Motion for Judgment of Acquittal or for Dismissal of the Evidence". At the request of defense counsel the jury was excused. Counsel gathered with the Court in chambers, argument was had, the court has overruled the motion. I'll note the motion accordingly. Proceed with the trial. Call the jury.

* * * *

(JURY RETURNED TO THE COURTROOM)

* * * *

[fol. 170] DAVID HARDING,

* * * *

DIRECT EXAMINATION BY MR. WEISGAL:

Q Mr. Harding, where do you attend school?

A I attend school at Johns Hopkins University.

Q What year are you in?

A Sophomore.

* * * *

[fol. 171] Q You were one of the many pickets that went down to the recruiting center, on what's that date again, March 28th?

A That's correct.

Q When you arrived down at the recruiting office what exactly did you and the other six defendants do?

A Well I arrived at the recruiting center with the other five defendants at approximately 3 o'clock. I'd say between 3 and 3:15. There were a few other people already there with some picket signs. We joined them and started picketing in front of the recruiting center.

Q Let's stop for a second. Have you seen any of these pictures that were introduced in evidence?

A No, I haven't so far.

Q How long did the six of you join the picket line?

A We joined the people who were waiting in front of the recruitment center at that time and with them [fol. 172] started the picket line.

Q How long did you remain on this line?

A I would say approximately ten to fifteen minutes.

Q Then what did you and the other six defendants do, other five rather?

A The six of us left the picket line at that point and went into the recruiting center.

Q Then you had a discussion with the sergeant?

A Yes, sir. We brought with us certain pieces of literature, not the posters that were carried by the picketers. Other pieces of literature. We requested the recruiting sergeant who was in the recruiting center that he place these pieces of literature in the front window of the recruiting center along with other literature.

Q Will you describe what that is?

A Yes, sir. This is one of the pieces of literature that we brought in with us. I'm showing at this point to the recruiting sergeant and requested that he place it in the window. We told the recruiting sergeant—This isn't the only piece of literature I had, we had other things in addition to this. We mentioned to the recruiting sergeant if he had any objection to these specific [fol. 173] pieces of literature and pictures that we would be willing to come back with other pieces of literature and ask him if they would be all right in place of these we had brought in.

MR. WEISGAL: For the record, I am now showing the jury State's Exh. Number 7. If there is any one on the jury that wants to look at it again I can pass it around.

Q After the sergeant refused to place any of this literature around there, what did you then do?

A He refused and we proceeded to sit down in the chair. There were a number of chairs and there was a couch in the recruiting center.

Q Was there enough room for all of you to sit on the chairs and on the couch?

A Yes, there was.

Q Did any of you sit on the floor?

A No, we did not.

Q What happened at five o'clock or approximately five, around five o'clock?

A At approximately five o'clock the recruiting sergeant, who had been in the inner office, stepped out and [fol. 174] told us that he was going to close the recruiting center. The lights were turned off and the shades on the front window were put down. He asked us once again if we would leave. We said no. I personally said that I thought our most important business here— He came forward and said he had other business, that he had to do at that time, so he had to leave. I replied, I replied I thought our most important business was to remain in the recruiting officer at that time. At that point the Federal Marshall stepped forward with one or two deputies. They showed us their identification, asked us once again if we would leave. We refused and at that point the recruiting sergeant took Donald Bacheller's arm and started pulling him up from the seat he had been sitting in, toward the door. He got up and he was pushed out the door. After that police officers and Marshalls or Marshall's deputies came forward and picked up those of us who were still seated in the recruiting center, carried us to the door and threw us out.

Q You use the word threw you out?

A That's correct.

* * * *

[fol. 175] Q Just describe what happened to yourself, Mr. Harding?

A Well I was sitting on the couch in the recruiting center. I'm not positive whether it was deputies or Federal Marshalls or deputies or police officers, but at least two people picked me up from where I was sitting, carried me over to the door and threw me out the door.

Q How did you land?

A I landed on my butt, my rear.

Q Then what did you do?

A Well, I sort of, you know. I hit the sidewalk pretty hard. I sat up and other people were being thrown out

of the door after me and on top of me. I was hit by one or two people who had been thrown on top of me. As soon as everybody who had been in the recruiting center at that time was thrown out I attempted to get up. [fol. 176] I was worried that somebody had been hurt. I knew I had hit pretty hard and I was worried what had happened to the other people.

Q You say you attempted to get up?

A That's correct.

Q Then what happened?

A When I tried to get up there was a law enforcement officer of some sort, Federal Marshall or policeman, he was standing in back of me. When I attempted to stand up he pushed me down with his hands over my shoulder back down to the sidewalk.

* * *

Q Were you told at any time by either Sgt. DiCarlo or Lt. DiPino who testified here to get up?

* * *

A I was not told.

[fol. 177] MR. WEISGAL:

Q Are you sure?

A I am sure.

Q Were you at any time told that you were under arrest?

A No, sir. Just picked us up off the sidewalk and took us to the paddy wagon.

Q Mr. Harding, how would you describe the crowd at this time?

A It was large. When we had been thrown out of the door of the recruiting center, we were all essentially thrown into the picket line which had been covering the whole front of the recruiting center and naturally it disrupted the picket line. I mean we were thrown into it. In some cases behind people who had been picketing in front of the building. I know as a matter of fact one girl was hit in the head by a demonstrator who was being thrown out of the building. She was knocked down.

This disrupted the picket line. There were a large number of spectators who gathered in the immediate vicinity of the picket line. When the picket line stopped moving and broke up because people were thrown into the people [fol. 178] who had been on the picket line, the spectators who had gathered just sort of all moved in around those of us, the defendants who were on the sidewalk.

Q Did you see any soldiers or Marines there?

A Yes, I did.

Q Did you have any conversation with any Marines who were there?

A No, I did not.

Q Did he make any threatening gestures toward you?

* * * *

A No, he did not.

MR. WEISGAL:

Q Were you threatened by anyone in the crowd at any time?

A No, sir.

Q What was the crowd doing?

A Well many of the people in the crowd who were spectators were yelling "Bomb Hanoi", "Bomb Hanoi".

Q What were you doing. What were the picketers doing?

[fol. 179] A After we had been on the sidewalk for a brief period, we began singing "We Shall Overcome". There was a lot of noise.

Q Then you were carried across the street and placed in the paddy wagon, is that correct?

A That's correct.

Q Did you see the paddy wagon arrive?

A Yes, I believe I did.

Q What time did it arrive? How long had you been out on the pavement when it arrived?

A Oh, approximately, at a maximum of five minutes.

Q What was your purpose in going to the recruiting office with the other six men, going down to the recruiting officer and picketing in front of the recruiting office?

A Well the purpose of the entire demonstration was

to protest the United States involvement in the war in Viet Nam and by the six of us going to the recruiting center and requesting that literature, showing quite a different view of the war in Viet Nam than the literature already in the window that concerned the war in Viet Nam; by our action in doing that to illustrate the fact that the government is not publishing, giving the [fol. 180] public the full view of everything that is going on in Viet Nam.

* * * *

CROSS EXAMINATION BY MR. LIPSON:

Q How old are you, Mr. Harding?

A I'm 21.

Q Specifically, with regard to the last question that the government is not giving the full picture, how do you know this?

A Well, number one, because I read reports in the newspapers that are quite contradictory.

Q What do you mean by contradictory?

A Different points in time, different reasons for United States involvement in Viet Nam are articulated. Facts that seem to contradict each other are published by the government in different points in time. And then usually following that in many cases government officials claim there is no discrepancy between the different reports and they are entirely consistent—

Q You think these government officials are wrong?

[fol. 181] A I don't think the reports are consistent.

Q And based on this you are saying the American public, although it's in the newspaper, is not getting the full picture?

A Well that, in addition to the fact that I think many things are going on in Viet Nam that are not published in the major newspapers in the United States.

Q If they are not published, how do you know about them?

A Because I read other than the major newspapers in the United States.

Q What do you read?

A I read a number of publications that would be described as being on the left. I read many cases, books that the general public probably doesn't read, though they are available to the general public, by very respectable people. In many cases people who have acted as consultants for the U.S. Government.

Q Everything you read is something that has been published for general distribution?

A That's correct

[fol. 182] Q So it's available for the public?

A Yes, it is.

Q If the public wants to read it they can read it?

A Yes.

Q So obviously there are many other people than you who are aware of this alleged contradictory material, is that correct?

A Yes, who could be aware of it.

Q Who could be aware of it? So you held no big secret in your mind that the other people weren't allowed, didn't have the opportunity to know about, is that correct?

A No. I mean I believe if a person in the United States wants to find out as much as he can about what is going on in Viet Nam that there are a number of sources that he can turn to that can very well educate him about what is going on there.

Q Have you ever been in the Army?

A No, I haven't.

Q What did you think this recruiting sergeant could do in his position now?

A Well previous to going into the recruiting center [fol. 183] and speaking with the recruiting sergeant I had been unaware of the fact that he had no say whatsoever over what appeared in the window of the recruiting center. He informed us that this was so.

Q Well after he told you this, Mr. Harding, why did you persist in staying there and persist in attempting to get this literature in the window and on the walls?

A Because by our presence there I hoped and I think all of the defendants hoped, all of the people who had been picketing outside hoped that by our presence at that

recruiting center we would number one protest the war in Viet Nam, number two, illustrate that the government is not giving a completely full view of all that is going on there and that's why we remained there.

Q Even after you knew the sergeant had no authority to accomodate you, isn't that correct?

A That's correct.

Q And you were hoping that by parading around on 33rd street, one block, to influence the general public in the City of Baltimore as to your views?

A We had hoped that by picketing in front of the [fol. 184] recruiting center and by requesting that literature be placed in the window of the recruiting center that gave a different view of the war in Viet Nam than that that was already in the window of the recruiting center—

Q Even though you knew by government authority, by the U.S. Army authority, you had no right to do this?

A As I stated before, before I went into the recruiting center I was not aware of the fact that the recruiting sergeant had no authority whatsoever.

Q But you found out in no short order, didn't you?

A Yes, I did.

Q Yet you persisted in staying there for better than an hour, hour and a half perhaps, is that correct, and you would not leave until he gave you authority when you knew darn well he had no authority, isn't that correct?

A That's correct. We hoped that by our presence in the recruiting center that we could draw attention to the fact that there are people in this community who believed that the U.S. Government is not giving and objective or full view of what is going on in Viet Nam.

Q By being inside talking to the recruiting sergeant [fol. 185] you were attempting to change his mind about his views on Viet Nam?

A No.

Q Well who else? He's the only one in there, the only man with any authority in there?

A We spoke to the recruiting sergeant as I said when we first went in and on a couple of occasions for brief periods while we were in the recruiting center. I didn't really hope to change the recruiting sergeant's mind.

Q But you persisted in sitting there for an hour or so?

A That's correct. I'll state once again the entire purpose of picketing at the recruitment center and the presence of six of us in the recruiting center was to draw attention to the fact that we believed the U.S. Government is not giving a full and objective view of what is going on in Viet Nam.

Q Wasn't this the purpose, of pickets out front who could be seen by the general public riding by up and down Greenmount Avenue?

A The purpose of the pickets in front of the recruit- [fol. 186] ing center was to, number one, show the fact that there are people who are against U.S. Government in Viet Nam and, number two, that we feel that there are many facts that are not being widely distributed.

Q If the pickets were open to public view, and obviously you were not, because you were in there by yourself with the recruiting sergeant, what purpose could you serve to notify the public when nobody could see in there and probably nobody knew you were in there?

A Well it's clear that in order to illustrate—I mean in a sense this was a test.

Q Test of what? Nobody saw you in there?

A It was a test.

Q Besides your own pickets.

A It was a test in a sense that we were giving the opportunity in one way or another for an official of the U.S. Government to agree to put up literature expressing a different point of view.

Q When you full well knew he wasn't going to do it, he had no authority to do?

A I stated I don't know how many times.

[fol. 187] Q Mr. Harding, isn't it true that you persisted in this activity even though you knew that the sergeant couldn't do a thing for you specifically and solely because you and the rest of the group wanted to be arrested?

A No, sir.

Q Haven't you stated before that you wanted to be

arrested as a result of this activity so you could test your case?

A I never said that.

. . . .

Q When you were informed that the building was being closed at five o'clock, you did see the sign on the window that said 8:30 to 5?

A Yes, we saw that.

[fol. 188] Q You were informed at five that the place was closing for business. Why didn't you leave when you were told to leave?

A We hoped that by our continued presence in the recruiting center that we could draw attention of those people in the vicinity of the recruiting center and of the general public to the fact that we believed that the U.S. Government has not been giving the full or objective view of what's going on in Viet Nam regarding their involvement there.

. . . .

[fol. 189] Q What attention did you hope to gain by refusing to obey the U.S. Marshall, recruiting sergeant who had orders to close at 5 o'clock and who informed you either by word of mouth which he did and by sign on the door that the place was closing at 5—whose attention did you hope to gain by refusing to leave and having to be carried out?

A The people in the immediate vicinity of the recruiting center and general public.

[fol. 190] Q You are saying you hoped to gain publicity for your views, is that correct?

A That's correct.

Q Don't you feel it would have been better to go to the news media directly? Wouldn't you have gotten more publicity that way if that is what you wanted?

A There are different ways in which one can have his views, get into the news media.

. . . .

Q Whose views were you hoping to influence, those in the 3300 block of Greenmount Avenue?

A We hoped to influence the people of the 3300 block Greenmount Avenue and general public.

Q There are all stores there, aren't there?

A Well, I don't know. I know there is a number of stores.

* * *

[fol. 191] Q Did you expect the recruiting sergeant to keep the place open because you insisted on staying there?

A I didn't know what to expect from the recruiting sergeant. I mean I really didn't know what to expect.

Q Which number were you put out on the sidewalk of the six?

A I believe I was second.

Q When you were put down, where did you land?

A I was thrown down.

Q You were thrown down? Isn't it true that your feet touched the ground first?

A No, that's not correct.

Q What happened when you were thrown down as you allege?

A I was thrown out.

Q What happened?

[fol. 192] A Well two law enforcement officials carried me to the door, they threw me out. I landed on my rear end on the sidewalk.

Q Were you injured?

A I had a sore rear end for a couple of days.

Q Did you have bruises on it?

A No.

Q Was it tender?

A Slightly.

Q Was it black and blue?

A No, it was not.

Q Did you require any hospitalization?

A No, I did not.

Q What position did you land in, a sitting or reclining position?

A Well sort of half way inbetween. I mean as they threw me I hit on my rear end. My feet were slightly up in the air. I wasn't completely horizontal and I wasn't vertical.

Q How long did it take you to assume the sitting position?

A Well immediately after I hit the sidewalk one or [fol. 193] two people landed on top of me.

Q Immediately landed on top of you? What did they land on?

A When I say immediately, I'd say within,—a maximum of five second intervals.

Q They were bombing you at five second intervals?

A People were landing on top of me at five second intervals.

Q What did you then do?

A As soon as I could I sat up.

Q How long was that?

A I would say at most fifteen seconds to half a minute.

Q These other people got up too, is that correct?

A What other people?

Q These other people that allegedly were thrown on top of you?

A They sat up, yes.

Q In what position on the sidewalk?

A Well I wasn't paying a lot of attention to them. I noticed that they did sit up. I was sitting with my [fol. 194] feet on the ground, my legs partially drawn up toward my body.

Q All right. When all six wound up on the sidewalk, relative to one another, would you describe the formation you were in, if there was a formation? Semi circle, straight line, rectangle?

A It wasn't in the shape of any normal geometric figure. We were irregularly located on the sidewalk.

Q You covered the whole sidewalk, correct?

A No.

Q What part of the—There were the six of you out there?

A That's true.

Q You weren't all line up against the building?

A No.

Q You had a sidewalk eight to ten feet wide. How much of the walk were you covering?

A Initially when most of us were thrown out there were spaces between us fairly wide. I don't know, at least in a number of case three or four feet. More people were close to the building than the curb.

Q There were some as far over as the curb, were [fol. 195] there not?

A I don't know. I didn't see. There were people closer to the curb than myself.

Q You didn't see, is that correct?

A I didn't notice anybody was actually right on the curb. There were people closer to the curb than myself.

Q You were facing in which way, toward the street or toward the building?

A Neither. I was facing approximately north, a little bit toward the street.

Q Who were you looking at?

A I was looking mainly at part of the crowd who had gathered and were standing there watching.

Q Why didn't you stand up?

A After I got to a sitting position the first thing I tried to do was stand up and I was restrained from doing that. I was pushed back down.

Q You were actually restrained from getting up?

A Yes, sir.

Q What was said to you by this alleged person who restrained you from getting up? Did he say sit?

[fol. 196] A He didn't—To the best of my recollection he said nothing.

Q He just held you down?

A That's correct.

Q Were they holding the other people down too?

A I don't know.

Q You don't know? Why not, you were right there with them?

A I said most of my attention was directed toward part of the crowd that had gathered and was standing around at that point.

Q You didn't see any of the other group, what happened to them?

A No. At the point where I was restrained I was

at that point looking at other people who had gathered around watching.

Q How were you restrained, describe the way physically, what action was used to restrain you as you say?

A A hand was placed on my shoulder. I was in a sitting position. A hand was placed on my shoulder. When I attempted to rise I was pushed back down.

[fol. 197] Q Who did this to you?

A Somebody standing in back of me.

Q You didn't see who it was?

A I didn't see specifically who it was.

Q Was it a member of the crowd?

A I don't believe so.

Q How do you know if you didn't see?

A The crowd was a slight distance back from where we were sitting.

Q Who was right behind you if you know I said?

A I said I don't know specifically.

Q It could have been one of your own pickets, is that correct?

A It's conceivable that it would have been one of my own pickets.

Q Who was holding you down?

A It was physically possible, yes.

Q Now the police were restraining this crowd from getting into you, were they not?

A Not the portion of the crowd I was looking at.

Q What was the crowd trying to do?

[fol. 198] A There was a mixture of pickets and spectators from that area, Greenmount Avenue, I presume mixed up and they were standing there and as I stated before a number of the spectators who had been a part of the crowd were chanting "Bomb Peking", "Bomb Hanoi", and a number of people who had been on the picket line, who were standing there, were singing "We Shall Overcome".

Q You were singing "We Shall Overcome" too, were you not?

A At one point, yes.

Q How many verses or choruses did you sing?

A I don't remember exactly.

Q How long did you sing?

A A minute or two.

Q Was this while the police were giving you orders to stand up?

A No, sir. I never heard any policemen give me or—I never heard any police officers give anybody else on the sidewalk orders to stand up.

Q Isn't it true you didn't want to hear this order because you didn't want to stand up and you did want to [fol. 199] get arrested?

A No, sir. I stated I tried to get up.

Q One of your own pickets held you back conceivably?

A It's conceivable from the point of view of physical—it's physically conceivable that the person who held me down on the sidewalk could have been one of my pickets. I just doubt very strongly whether a person who had come to that demonstration with me would hold me down to the sidewalk.

Q If he wanted you to be arrested and if he wanted to be arrested too?

A I just don't think that's what happened. I mean—I mean I can't,—it's conceivable from the point of view of distances involved and the fact that I didn't specifically see who was holding me down that it would have been one of my own pickets. But I just don't believe that would have been the case.

* * * *

[fol. 200] Q Did you see any other pickets being restrained by anybody else, from being able to get up off the sidewalk?

A No, I did not.

[fol. 201] Q Why, if you know, didn't they get up?

* * * *

A From what I saw at the time of the demonstration I don't know why the other witnesses didn't get up. I wasn't watching them all the time.

[fol. 202] Q MR. LIPSON: You have heard Sgt. Di-Carlo and Lt. DiPino testify that they were standing right alongside the group. Lt. DiPino testified that two

times he asked or ordered the group to stand and Sgt. DiCarlo three times, a total of five admonitions, warnings or requests to stand up. Are you saying this testimony of theirs is incorrect?

A I personally was never instructed to stand up.

Q You personally were not instructed to stand up?

A I never heard anyone instruct myself or anybody else sitting on the sidewalk to stand up.

Q Isn't this because you were singing and making noise because you didn't want to hear anything?

A No, sir. I think it's conceivable that, that at least one request to stand was given but due to the noise we didn't hear it. But I personally was never told to stand up and I never saw any of us requested to stand up.

Q What do you mean you never saw any of us requested to stand up?

A I never saw an officer come forward and ask us that.

Q You can only speak for yourself, is that correct?

[fol. 203] A I said I never saw an officer come forward and ask myself and I never saw an officer come forward and ask anybody else sitting on the sidewalk to get up.

Q They were standing right behind you, weren't they? Directly behind you?

A They were scattered all around.

Q Wasn't there a cordon of officers right behind you keeping the crowd off you?

A I didn't see directly behind me.

Q You don't know. Then you said you didn't pay a lot of attention to the other people in the group, is that correct?

A It depends on the point you are talking about. Like immediately after we were thrown out I looked around at the rest of the people who had been thrown out and attempted to stand. I gave up standing after I had been restrained. At that point I started looking at the crowd.

Q You weren't paying particular attention to the other five defendants, is that correct?

A I wasn't paying attention to them, no. Some of them were in field of view.

[fol. 204] Q You say it is conceivable this warning could have been given once. Is it conceivable it could have been given five times?

A Yes, it is.

Q With reference to this Marine you say you saw and the police testified was at least in the position or threatening to get at the group, you testified on direct that he didn't threaten you, is that correct?

A I don't believe—I don't believe the police officer described two Marines.

Q Yes.

A And from what they have said the Marine that I saw was not one of the two that they were describing.

Q So you don't know what the other Marine was doing or who if anybody he was threatening?

A I just saw one Marine, I guess within five or six feet of me, standing. And he was watching me, just looking at me.

Q How long were you on the pavement singing and doing whatever you were doing before you were carted away?

A At a maximum of five minutes.

. . . .

[fol. 205] Q Is it your testimony you were seated on the pavement for five minutes before you were arrested?

A I was on the sidewalk a maximum of five minutes before we were taken to the police wagon.

Q This is before a police officer came up to you and carried you away, is that correct?

A A maximum of five minutes before we were carried to the police wagon.

. . . .

[fol. 206] REDIRECT EXAMINATION BY MR. WEISGAL:

Q Now, David, did you hear any police officer tell you to get up?

. . . .

A No, I was not.

MR. WEISGAL:

Q What do you mean when you say it's conceivable that such an order could have been given?

A Well there was—As I said there was chanting going on on the part of the spectators who had gathered, and people who had been picketing, at one point we were singing and there was a lot of noise, and I think it is conceivable that an order or orders or request or requests that we leave the sidewalk might have been given but that we didn't hear them.

Q What do you really think, though?

[fol. 207] A Well I never was told directly to leave the sidewalk and I never saw a police officer give that order or make that request to anybody else that was on the sidewalk.

Q Now do you really believe it was one of the picketers that was holding you down?

. . . .

A No, I don't believe it was anybody who would have been in any way connected with the demonstration, who would come there to picket or any of the people who had gone inside the recruiting center.

Q Mr. Lipson told you that there were officers directly behind you, is that correct?

A He said, he intimated that there were officers.

Q I'm asking you is that correct?

[fol. 208] A I don't know whether there were officers directly behind me. I believe there was an officer standing directly behind me, but I mean as far as the crowd was concerned I don't know if they were in any way restraining the crowd.

Q It's also conceivable then, is it not, this officer could have been holding you?

A Yes, sir.

. . . .

[fol. 209] Q Was there any disposition on any part of the people in the crowd there as much as you could see to attack you or to do you bodily harm?

MR. LIPSON: Objection.

MR. WEISGAL: May we remove the word disposition and use the word attempt?

THE COURT: I'll overrule the objection to that.

A I saw no attempts to do us bodily harm.

MR. WEISAL:

Q Could any one of them gotten through and gotten you, anyone in the crowd if they wanted to?

* * *

A Yes, they could have, very easily.

* * *

RECROSS EXAMINATION BY MR. LIPSON:

Q How could they have gotten through to you?

[fol. 210] A Well, as I stated, there was a Marine standing within five or six feet of me and there was no police officer between myself and the Marine. There were other people, spectators who were standing within a few feet of me.

Q They were your own friends, were the fellow picketers, weren't they?

A No, they were not. These were spectators.

Q Weren't there police right around you?

A There were no police between myself and these spectators.

* * *

[fol. 211] Q You say restraint was imposed upon you, the person you are not sure of. How long was this restraint imposed upon you?

A I attempted to get up, just about as soon as I got to a sitting position, and I was just pushed down to the sidewalk. I attempted to rise. I, the first time I felt pressure on my shoulder. I mean the first time I didn't know exactly what was holding me down on the sidewalk. I was trying to get up but I couldn't rise. Then I pushed up again and I felt a hand on my shoulder pushed me back down.

Q So that is twice you tried that, is that right?

A In very quick succession.

[fol. 212] Q This was right after you were deposited on the sidewalk?

A Shortly thereafter.

Q Was this before or after the bodies were allegedly thrown on top of you?

A After.

Q What had happened to these other people that had been as you say thrown on top of you?

A They were sitting nearby.

Q You weren't observing them, is that correct?

A At different points I was observing them, other points I was not.

Q Now you made two quick attempts within a matter of seconds. Did you make any further attempts?

A No. I made an attempt to move in the direction of the building from the sidewalk.

Q Is that by crawling?

A No. I wasn't on my hands and knees, I was in a sitting—

Q Then you actually moved from your original position is that correct?

[fol. 213] A No, I was restrained from moving.

. . . .

Q You said you were on the sidewalk for a maximum of five minutes and that you made two quick attempts and no more attempts to get up, is that correct?

[fol. 214] A Yes, sir.

. . . .

FURTHER REDIRECT EXAMINATION BY MR. WEISGAL:

Q Did you or any of the five defendants at any time deliberately lie flat across that pavement?

A I did not.

Q Did you see whether any of the other defendants did?

A After we were able to, as soon as the other people were able to sit up they sat up.

. . . .

THE COURT: Let me ask the witness just one or two questions. What was your position at the time you [fol. 215] were singing? That has not been described.

A I was in a sitting position.

THE COURT: And in what fashion were you taken to the cruiser after the arrest?

A I was carried.

THE COURT: Is there any particular reason why you didn't walk?

A Well I mean the officers just came forward and picked us up and carried us to the police wagon.

THE COURT: Did you attempt to walk?

A No, I did not.

* * * *

FURTHER RECROSS EXAMINATION BY MR. LIPSON:

Q You have consistently, continuously testified that you did not pay particular attention to the whole group or any particular member of the group while you were there. Yet you testified that the others didn't lie across [fol. 216] the sidewalk either, is that correct?

A I didn't testify that I continuously did not pay particular attention to the group. I said, I think the record will show this, at times I looked at the demonstrators on the sidewalk and at other times I looked at the crowd.

Q So you can't of your own personal knowledge say that at no time did none of these people lie across the sidewalk, can you?

A It's conceivable while I was not looking at them some people were lying on the sidewalk.

* * * *

FURTHER REDIRECT EXAMINATION BY MR. WEISAL:

Q What do you mean by it's conceivable?

* * * *

[fol. 217] A It's physically possible. The people who, that I saw sitting on the sidewalk, I presume were capa-

ble of lying on the sidewalk if they wanted to do so. While I was not looking at them it's possible that they laid on the sidewalk, from the physical point of view. They were fully capable of it and they could certainly do it while I wasn't looking at them if they desired. I don't think they wanted to. For that reason I don't think it would have happened. But it is physically possible for them to have done that.

* * * *

[fol. 218] Q Mr. Harding, did you call the Police prior to March 28th to inform them of the demonstration that was going to take place at 3328 Greenmount Avenue?

A Yes, I did.

Q How did you know who to call?

A I called up a police officer who I had met on occasion of a demonstration against discrimination in housing.

* * * *

THE COURT: * * * You reported it before it happened?

A That's correct.

* * * *

DANIEL RUDMAN,

* * * *

[fol. 220] DIRECT EXAMINATION BY MR. WEISGAL:

* * * *

Q Where do you attend school?

A I attend Johns Hopkins University.

Q You still attend Johns Hopkins?

A I just graduated this year.

* * * *

[fol. 221] Q Mr. Rudman, you were one of the six men arrested as a result of the demonstration, is that correct?

A Yes, I was.

Q Now you also arrived at approximately what time?

A Approximately three o'clock.

Q How long would you estimate you were on the picket line?

A Approximately ten to fifteen minutes.

Q Then what did you do?

A Well after marching around for ten or fifteen minutes I entered the recruiting station with the other five defendants.

Q Did you participate in any of the requests for discussion in order to put up signs or posters?

A No. I remained quiet. There was one spokesman. I let them do most of the talking.

Q In other words, the rest of you just sat there and observed?

A Yes, sir.

Q Now directing your attention the,—you heard the U.S. Marshall ask you to leave, did you not?

[fol. 222] A Yes, I did.

Q You heard the sergeant ask you to leave, did you not?

A Yes, I did.

Q You did not leave?

A No, I did not.

Q Now, describe what happened after that?

A At approximately 5 o'clock the Marshall asked us to leave. We refused. First Mr. Bacheller was taken by a Marshall and officer toward the door. Then I was taken. The way we were taken, the way I was taken specifically, I was pulled up off the couch I was sitting on, taken by one man on each side of me, each taking my arm and leg, carrying me to the door and thrown out on to the pavement approximately four, five feet, three to five feet out in front of the recruiting station. I was thrown on to the sidewalk.

Q How did you land?

A I landed primarily on my back side but a little bit on my right, on the right side of my back side, partly on my thigh.

[fol. 223] Q What did you do then?

A Well all I did was gather myself together, just drew my legs a little closer. And what was happening immediately after I got out, the other boys were being thrown out right after me. Dave Harding was thrown out on the pavement and following him Allen Green was thrown out on the pavement and then Wayne. Precisely because it happened so rapidly, you know, I just had the chance to get myself together and observe what was happening to them right near me, being thrown out in front of the door. Should I continue with what happened?

Q I want to ask you this question. What happened to the pickets while you were thrown out?

A When we were thrown out the picket line was no longer able to move because we were actually thrown right into it. Therefor, as far as I could see, it stopped. It was no longer able to move around in a circle.

Q What happened to the crowd and pickets?

A Well the crowd and pickets were intermingled precisely because everyone had now started to bunch up around the area we were thrown out and there was [fol. 224] no separation of groups. It was not a separate picketing group and a separate passerby group. They were indistinguishable except for the fact the pickets had signs, some of them.

Q What did you do then?

A Now as soon as everyone was thrown out, for some reason, I don't know why, I was grabbed by the collar and pulled along the sidewalk toward the curb and left half on the curb and half off. More specifically my back side, part of my backside was left on the gutter and my legs were left on the sidewalk. Now immediately following then I was let go. So I attempted to just get back on the sidewalk. Now I sat on the sidewalk and then after gaining ahold of myself I tried to stand up. At this time, while I tried to stand up, the officer who had dragged me across the sidewalk now put his hands on my shoulder and prevented me from getting up. I struggled further to try to get up and he said "Down, down, down" and pressed on my shoulder, and remained holding me there for a certain amount of time which I

couldn't exactly say. Another minute probably. I thereupon remained there until I was carried bodily by two persons and thrown in the paddy wagon.

[fol. 225] Q Now did you hear any officer at any time tell you to get up?

A No, sir, I didn't.

Q Did you hear any officer at any time say to you, "All right fellows, get up and get out"?

A No, sir, I didn't.

Q Are you sure?

A Yes, I am.

Q Did you at any time hear the lieutenant tell you that you were under arrest?

A No, I did not.

Q Would you have been able to have heard him if he had made such a remark?

* * * *

A No. The lieutenant was never close enough to me to make—In other words, if he had made such a remark I would have heard him—I wouldn't have heard him because he was far away from me and the only policeman that was close enough to make such remark was [fol. 226] the policeman in back of me. The only thing he stated was "Down, down, down".

MR. WEISGAL:

Q You heard the sergeant testify he was in the middle of the crowd there, he asked all of you on three occasions to get up. Did you hear him ask you to get up?

A No, I did not.

Q Did you want to be arrested?

A I went to the recruiting station to protest the war in Viet Nam. I did not go there to be arrested. I realized there was a possibility of being arrested but I went there to protest the war in Viet Nam.

Q Incidentally, what was the crowd doing while all of you were on the pavement? Was the crowd making any remarks, any threatening, were they making any sounds or noise?

A The main sound there I heard was chanting "Bomb Hanoi, Bomb Hanoi".

Q Were you one of those that joined in singing "We Shall Overcome"?

A Yes, I did.

Q Would this have prevented you from having heard [fol. 227] any command?

A No, I don't think so.

Q While you were on the pavement were you at any time in fear of bodily harm from any of the onlookers?

A No, sir, I wasn't.

Q Did anyone in the crowd at any time threaten you or attempt to molest you?

A No, sir, no one did.

* * * *

CROSS EXAMINATION BY MR. LIPSON:

Q One interesting comment, Mr. Rudman. You remarked that you realize that there was a possibility of your being arrested. Would you explain that, please?

A Well on any demonstration that involves a protest, a political protest, there is always the possibility of being arrested.

Q For what?

A Excuse me?

Q For what?

[fol. 228] A Well, I don't know. But I have in the past been on demonstrations, civil rights demonstrations, depending upon the attitude of the police at the particular time, various charges have been made.

Q Isn't it for violations of the law that arrests are made?

A I couldn't answer the legal question. I don't know why.

* * * *

[fol. 229] Q Isn't it true that arrests are made for violations of the law?

* * * *

A Yes, arrests are made for violations of laws.

MR. LIPSON:

Q Did you go there anticipating to violate the law?

A No, I did not.

Q Why did you anticipate you might be arrested?

A I said I anticipated the possibility of being arrested. No matter what kind of demonstration I thought it might anticipate that possibility.

Q You possibly realized you might be doing something wrong?

A No, sir, I did not say that.

* * *

[fol. 230] Q * * * How long were you sitting on the sidewalk after you were placed there by the police?

A From the time I was thrown out on to the pavement I would say until the time I was taken into the paddy wagon, I would say from three to five minutes.

Q This officer that allegedly restrained you from getting up, how many times did he restrain you?

A I tried to get up once he pushed me down. Then I tried to struggle further and he said "Down, down, down".

Q What is that officer's name?

A I stated previously that he grabbed me by the back and dragged me, so I only got a glimpse of him. I could [fol. 231] not really identify him.

Q Can you identify him as a police officer?

A Yes, I can.

Q You don't know his name?

A No, I don't.

Q Didn't you see him any time after? You were there three to five minutes?

A I said that he dragged me to the gutter, to the curb and gutter and stood behind me. When he pressed down on me he was behind me so I could never get a good look at his face.

Q In the three to five minutes you were never in a position to identify a man who dragged you as you say across the pavement? You were never concerned with knowing who this was?

A When a man has his hands on your shoulder it is very difficult to turn fully around and look at him in the face.

Q Did you say "ouch, you're hurting me", or "Stop that", or anything?

A I did not think that would do any good in view [fol. 232] of the fact I had tried to get up. He prevented me from doing so.

Q You never once tried to turn around and determine who he was?

A I tired but it's very difficult to turn around when someone is holding you down.

Q You said his hand was on your shoulder, is that correct?

A I said his hand was pressing down on my head.

Q There's no hand on your head or neck, is there?

A I said I got a glimpse of him. I said I could not identify him fully.

Q The officers were wearing their names, badges with names like they do today, were they not?

A I don't remember.

Q Weren't you given the opportunity to walk to the paddy wagon?

A No, sir, I wasn't.

Q You mean without asking they just picked you up and carried you over?

A Yes, sir.

[fol. 233] A Well it happened very very quickly. They picked me up—

Q The paddy wagon was across the street, was it not?

A Yes, sir.

Q Its across the width of Greenmount Avenue.

A Yes, sir.

Q At no time during this so called carrying did you say put me down, I'll cooperate, I'll walk with you?

A I said it happened very quickly. They picked me up, carried me very quickly to the paddy wagon.

Q Did they run with you?

A I wouldn't say run but very quickly, as quickly as they could in view of the fact they were carrying somebody.

Q You were on the sidewalk three to five minutes you say?

A Yes, sir.

Q After you were told by the recruiting sergeant and U.S. Marshall to leave, did you leave?

A No, sir.

Q Why not?

A I had come there to protest the war in View Nam. [fol. 234] I felt that staying there would be the best way to protest.

Q Didn't you know at that time you no longer had any authority to stay there?

A What do you mean by authority?

Q Didn't you know that U. S. Marshall, didn't he show you his badge and ask you to leave?

A Yes, he did.

Q Did you think he didn't have any authority to ask you to leave?

A No. I thought he was just what he said he was, a U. S. Marshall.

Q Did you or did you not think he had authority to ask you leave?

A Well if he was a Federal Marshall, which I accepted, I believed he had authority.

Q You disregarded, you went against his request and his orders to leave, is that correct?

A I said I would refuse to leave.

Q And you didn't leave, you had to be carried out, is that correct?

A Yes, sir.

[fol. 235] Q Even after the U. S. Marshall and recruiting sergeant, who you knew was closing the place, asked you to leave?

A Yes, sir.

Q Who was the spokesman of the group you mentioned?

A David Harding.

Q He did all the talking for the group? Did he arrange this demonstration?

A Did he arrange this demonstration?

Q Yes?

A No, he didn't.

Q Now you have heard Lt. DiPino and Sgt. DiCarlo testify they were standing right alongside of the group?

A Yes, sir.

Q And a total of five times one or the other of them said get up?

A Yes, sir.

Q Are you saying that they are not accurate in what they said or they are not telling the truth?

A I am not saying that. All I said I personally did not hear any officer tell, tell me I was arrested first, [fol. 236] or tell me that I should leave and get up. I did not hear either Sgt. DiCarlo or Lt. DiPino, that's all I can say.

Q Isn't it true it's not that you didn't hear, you didn't want to hear because you were anxious to continue this type of activity that you had been engaged in?

A No, it's not true. As I stated I was not permitted to get up because the officer was pressing his hand down on me. I tried to get up and I was not allowed to. I was never told that I had been arrested, I was never asked to get up.

Q Why did you try to get up if you weren't asked to get up?

A I was thrown out to the sidewalk bodily, I was dragged to the curb. I do not like being thrown out to the sidewalk or dragged to the curb, I would like to stand up. I thought it was quite irrational that I was thrown out and dragged.

Q You knew you were doing something wrong, weren't you? You were disobeying a U. S. Federal Marshall's order, were you not, on Federal property?

A Yes, sir.

. . . .

[fol. 237] Q Might not you have also been willing and anxious to disobey the order of the Baltimore City police officer by pretending not to hear?

A I can only repeat that I was not told at any time that I was to be arrested or that I should get up. I was not warned at any time.

Q Are you alleging then that Lt. DiPino and Sgt. DiCarlo did not say this?

A No, I'm not alleging that. I can only allege what I saw and what I heard.

Q Where was the lieutenant or sergeant standing with regard to you?

A I'm not certain. I would say that since I'm on the curb, he was closed to the others. I was further away. I was the furthestest away from the group.

[fol. 238] Q Then you saw him, is that correct?

A Yes, sir.

Q You saw both of them?

A The only one I remember is the lieutenant.

Q Did you see him talking to any other members of your group?

A I wasn't looking at them all the time but the time I was looking at him I did not see him—

Q You weren't looking at him all the time?

A No, sir, I did not.

Q Did you see, personally, other members of your group restrained from getting up to their feet?

A No I did not.

* * *

[fol. 239] Q Did you or anyone else in your presence anytime prior or subsequent to this date, March 28th, make the statement that you went there to be arrested and you wanted to be arrested?

A I never made that statement and I was not in the presence of anyone who did make that statement.

Q No one ever made it to you?

A No.

Q I specifically now call your attention to April 19th. You recall that date, April 19th?

A Yes, sir.

Q Did you happen to be in company with the other five defendants on that date?

A Yes, sir.

Q Did anyone of those or yourself make the statement on that date that you wanted to be arrested when asked [fol. 240] the question?

A To the best of my ability to remember I did not make that statement nor did I hear anyone else.

Q You're not sure of it?

A I said as far as I can remember.

Q As far as you can remember. With the position that all five or six of you were in on the sidewalk, the total group was blocking the sidewalk, were they not?

A No, sir, they were not.

Q They were not?

A I'd like to explain how they were.

* * * *

Q All right, please explain?

A I'd like to give a picture.

* * * *

A The sidewalk is approximately thirteen or four-[fol. 241] teen feet wide and we were thrown out of the door. No one was any further than about six feet when they landed in that group. Approximately six feet from the door or closer to the door. Now as I stated previously, I was dragged from that group to the curb and Mr. Bacheller was a little further in from the curb. So it was me, Mr. Bacheller a little further in and there was quite a space of about three feet and then there was the rest of the group and I think it was quite easy for the people to walk through the spaces.

MR. LIPSON:

Q Didn't you testify that the picketers stopped moving because of this introduction of foreign bodies into their group?

A I'm only speaking about the demonstrators, the six demonstrators, if they were blocking the sidewalk. I said there was plenty of room to walk through them. I did not make any statement as to the picketing. You're right, they were picketing and people who were—

Q The picketing stopped did it not because you were blocking the sidewalk, they could no longer picket?

A The picketing stopped because we were thrown [fol. 242] out bodily into the picket line.

Q After you were allegedly thrown, in this three to five minute period, did you make any effort to clear the

sidewalk so this group or any group could have free passage on that sidewalk?

A I don't—Did I make any effort?

Q Did you make any effort to get out of the way so there could be free passage on this sidewalk?

A As I stated previously, very shortly after I got out I was dragged to the curb by an officer and I was not allowed to stand up. Seems very difficult in that position to do anything else.

Q But you moved from that position you testified. You didn't stay, you moved over with your feet or your butt in the gutter as you testified. You left that position.

A I moved from being half in the gutter and half on the curb to all on the curb.

Q What position on the curb?

A Sitting.

Q Right alongside of the street?

A Right, yes.

[fol. 243] Q The officer let you move, did he not?

A He let me get onto the sidewalk and then put his hand on my shoulder, preventing me from standing up.

Q Did he prevent you from any further up on the sidewalk?

A Prevent? I don't understand.

Q In other words, you are saying that you are in a position ow on the curb—did you ever attempt to move from that position any other place?

A I attempted to stand up.

Q How about move, slide like. You were able to slide before?

A I never did slide before, I was dragged before.

Q How did you get back on the curb, did he drag you back on the curb?

A No, he permitted me to get back on the curb.

Q He permitted you?

A Yes, sir.

Q Did you ever try to move from that position to any other position?

A I tried to stand up.

[fol. 244] Q Besides standing up?

A No, I did not.

Q You heard people in that line say "Let us at them", did you not?

A No, sir, I did not.

Q You heard "Bomb Hanoi", but you never heard "Let us at them"?

A I didn't hear individuals speaking, I just heard some chanting "Bomb Hanoi".

* * * *

[fol. 245] REDIRECT EXAMINATION BY MR. WEISGAL:

Q Mr. Rudman, did you at any time see any of the officers attempt in any way to disperse the crowd that gathered?

A No, sir, I did not.

* * * *

MR. WEISGAL: Was it possible for people to walk [fol. 246] through you when you were on the sidewalk?

A Yes, sir. As I stated previously there was plenty of space for people to walk through.

* * * *

KIM MOODY,

* * * *

DIRECT EXAMINATION BY MR. WEISGAL:

* * * *

[fol. 247] Q Were you at the demonstration on March 28th?

A Yes, I was.

Q What time did you arrive there?

A I arrived at the demonstration at about twenty of five.

Q Twenty of five? Did you have a sign with you when you arrived there?

[fol. 248] A No, I didn't have a sign with me when I arrived.

Q Did you pick up a sign?

A I think—I think I got on the line and somebody gave me one when I got in line. I don't remember exactly.

Q And you were walking around carrying one of these signs? Were you carrying one of these signs?

A Yes, sir.

Q Incidentally where are you employed?

A I work at the Department of Welfare.

Q How long have you been working there?

A Nine months now.

Q And what are you, a case worker?

A Yes, sir.

Q Were you there when these men were—were you on the picket line when the six defendants were removed from the recruiting office?

A Well, yes, I was there. The picket line, however, was kind of becoming dispersed at that point.

* * *

[fol. 249] Q What happened to the picket line when the first man—Well let me ask you this question. How were the men brought out of the recruiting office?

A From where I was at the time that that happened I couldn't see them coming out. The line got dispersed at one point and I was more or less on the outside of the crowd that was assembling there, so I couldn't see them brought out of the recruiting center.

Q After these men were out of the recruiting center were you standing next to picketers or standing next to onlookers?

A I was standing next to both.

Q Now throughout that period were you afraid of any bodily harm?

* * *

[fol. 250] A No, I wasn't.

Q Did anyone make any threatening gestures to you?

A No, sir.

Q Did anyone try to grab the sign that you were carrying and take it away from you?

A No, sir.

Q What did you do after the six defendants were placed in the paddy wagon?

A After they were placed in the paddy wagon?

Q Yes?

A Well at that time the crowd and demonstration broke up and I left and walked home from there.

Q Now how close would you say you were to any of the defendants who were on the ground?

A Well it's hard to tell. I would say maybe around five or six feet. I'm not sure of that because I couldn't really see them.

Q Did you at any time hear any of the police officers tell any of these defendants to get up?

A No, I didn't.

Q Did you hear the police officers at any time tell [fol. 251] any of these men they were under arrest?

A I don't recall hearing that.

* * *

Q Did you hear any police officer giving any command to any of these six men with respect to getting up?

A No, I didn't.

Q Did you see any of the men when they were removed from the recruiting office?

* * *

[fol. 252] A I didn't see that.

* * *

CROSS EXAMINATION BY MR. LIPSON:

Q Mr. Moody, which one of these six defendants do you know personally?

A I know all six of them personally.

Q They are friends of yours, are they?

A Yes, sir.

Q How long have you known them?

A Well for different periods of time, some longer than others. The longest for about a little over two years.

Q You belong to any organizations with them?

A Yes, sir.

* * *

[fol. 253] Q Had you made prior arrangements with any of the six defendants to be at this particular demonstration?

A Well we had made organizational decisions. I don't

remember that any of the defendants personally asked me to come. In fact I think it was somebody else.

. . . .

Q Now once you're in this line around the six boys, when you were standing around this line facing the demonstrators who were on the ground, were there people standing behind you?

A I think so.

Q Any idea how many people were behind you?

A No.

Q Did you ever turn around to see what those people [fol. 254] were doing?

A I looked around the crowd. I don't know specifically whether I looked around or not. I looked around people that were around me.

Q There was a good sized gathering at that point, was there not?

A Yes, sir.

Q Is it safe to say then you weren't keeping your eye on every person in that crowd?

A Yes, sir.

Q You really don't know what they were doing either in the way of addressing the demonstrators by gesture, by talk or any other way? Do you?

A Only the ones that were right around me.

Q Right around you? How large a crowd would you estimate?

A Oh, there were fifteen to twenty people probably around where I was standing.

Q The total group that had gathered there on the sidewalk, how large was it if you can approximate?

A I would imagine that it was four or five times [fol. 255] that. Three or four times anyway.

Q You mean in the vicinity of 75, 80, maybe more people?

A I think so.

Q So it is safe to say then that you wouldn't necessarily know what each person was doing at any one time, is that correct?

A Yes, sir.

Q It's also safe to say that if any threatening gestures had been made toward these people you very conceivably could have missed it, is that correct?

A I could have missed some such gestures if any had been made toward me from people around me.

Q But you weren't laying on the ground, were you?

A No.

Q Now you stated that you were five to six feet from the closest of the people on the ground. How far were you from the furthest?

A Well it's hard to say because I couldn't really see. All I could see was sort of where the bunchup crowd ended and where there was kind of an empty space. A space of [fol. 256] about seven or eight feet, maybe more.

Q In addition to the five or six, is that correct?

A Yes, but at different times. I was trying to get closer to see what was going on.

Q You were moving around the crowd then, is that correct?

A I was moving in towards where the six defendants were.

Q And the policemen were standing all around there?

A There were policemen there, yes. They were standing.

Q So at sometime or another you were actually further from the group than this initial or original five to six feet, is that correct, from the first person?

A At sometime I was further than that.

Q Yes?

A Probably in the beginning I was further, when the crowd was first dispersed.

Q So you have now stated that the furthest one was perhaps another seven or eight feet away from the nearest one? You are now out to thirteen or fourteen feet [fol. 257] away, is that correct?

A Yes.

.

REDIRECT EXAMINATION BY MR. WEISGAL:

Q Mr. Moody, you say while you were standing in the crowd there were officers around?

A Yes, sir.

Q Did any of these officers at any time make any attempt to disperse the crowd?

A Not until the very end, until after the defendants were taken to the paddy wagon.

Q Had been placed in the paddy wagon, you didn't hear any command like that, di you?

A No, sir.

Q And incidentally, at all times you were still holding that sign, weren't you?

[fol. 258] A Yes, sir.

. . . .

[fol. 259] Q You were holding the sign protesting the war in Viet Nam?

A Yes, sir.

. . . .

Q There were no menacing gestures, threats or remarks made to you, were there?

A No, sir.

. . . .

RECROSS EXAMINATION BY MR. LIPSON:

Q Now among the people in the crowd there were quite a few of the picketers and demonstrators were there not?

A Yes, sir.

Q How many would you say intermingled among this general crowd that Mr. Weisgal refers to?

A Well I know that—that would be hard to say from [fol. 260] what I remember. But I know there were, I guess about forty-five, fifty pickets and at least as many people in the crowd. Perhaps more people in the crowd.

Q So in fact if an order had been directed to the group to disperse it would include some of the picketers, would it not?

A Yes.

. . . .

RICHARD GREEN,

. . . .

DIRECT EXAMINATION BY MR. WEISGAL:

Q Mr. Green, on March 28th you were one of the picketers up at 3328 Greenmount Avenue, is that correct?

A Yes, sir.

.

[fol. 261] Q I'm just going to limit your questions. After the defendants had been put out of the recruiting office what happened to the picket line?

A The picket line was broken up.

Q Now at that time did you, were you part of the circle that surrounded the picket line?

A Surrounded?

Q Surrounded the pickets?

A Yes, sir.

Q Did you have a sign?

A Yes, sir.

Q Did anyone threaten you?

A No.

Q Did anyone strike you?

A No.

Q Did you at any time hear any officers attempt to disperse the crowd?

A No, sir.

Q Did you at any time hear any of the officers tell—
How close were you to the closest picket?

A Ten to fifteen feet.

[fol. 262] Q How close were you to the closest officer?

A Approximately the same.

Q You were—Were you standing next to pickets or were you standing next to onlookers?

A Onlookers.

.

CROSS EXAMINATION BY MR. LIPSON:

Q Mr. Green, did you see these Marines?

A No.

Q You never saw the Marines?

A No, sir.

Q How old are you, Mr. Green?

A 17.

Q How far were you from the farthest picket?

A When I was watching the demonstrators?

Q Yes, the furthest demonstrator on the ground, I'm sorry?

A Twenty or twenty-five feet I think.

[fol. 263] Q Was this while the singing was going on too?

A Yes, sir.

Q You were never at any time told by police that you could not picket, is that correct?

A No, sir.

Q None of the other pickets were either, were they?

A No, they were not.

Q There was never any interference with your right to march around there carrying a sign?

A We were limited to the space in front of the recruiting station.

Q But they never told you you couldn't walk around, that you had to stop walking, is that correct?

A When the demonstrators were put out of the recruiting station we stopped, yes.

Q Then you were physically unable to, is that right?

Q We could have carried on the line. It would have been some ways away. There wasn't much point in carrying it on because this was—well the center of the demonstration, it changed to the form we were really just concerned with watching to see what happened then.

Q And the police were actually there overlooking the picketing, were they not?

A Yes, sir.

Q How long were you there before these boys were put out of the recruiting station?

A Between the time they were put out and the time—Oh, I see. I was there from about 3 o'clock until then.

Q That was near the beginning, was it not?

A Yes, I was.

Q You were there for about a period of two hours?

A Yes, sir.

Q And at no time did the police interfere at all with any of the picketing, is that correct?

A Yes, sir, that's correct.

* * *

REDIRECT EXAMINATION BY MR. WEISGAL:

Q In fact the picketing was very peaceful until these men were thrown out?

A Yes, sir.

[fol. 265] Q What happened then?

A Then the line broke up and—

Q Why did the line break up?

A Because—it broke up so the spectators—because we were interested in seeing what happened to the demonstrators. I suppose it was—it wasn't planned but, you know, we saw them thrown out and we wanted—well we were worried about their physical welfare.

Q I have no further questions.

* * * * *

MARY REARDON,

* * * * *

DIRECT EXAMINATION BY MR. WEISGAL:

Q Where do you go to school?

[fol. 266] A Notre Dame College. I just graduated.

* * * * *

Q On March 28th were you one of the picketers or demonstrators up at the recruiting center at Greenmount Avenue?

A Yes, I was.

Q What time did you arrive there?

A I got there about quarter of three.

Q About a quarter of three?

A Yes, sir.

Q How long did you picket or demonstrate?

A Until about ten after five.

Q What caused the picket line to stop?

A Well I really couldn't say what caused it to stop. We just decided to disperse after the six were arrested.

Q Prior to that, what happened? Did you see any of the men removed from the recruiting office?

A Well I didn't really see them removed, but I could see part of Dave Harding. I could see his arm or something and I heard them throw them onto the ground.

* * * * *

[fol. 267] Q What did you hear when Mr. Harding was removed?

* * *

A I heard Dave Harding being dropped or thrown onto the ground. It was then that I looked. At the same time I heard him, I looked. I knew it was Dave Harding because of the jacket he was wearing.

MR. WEISGAL:

Q You actually heard a noise?

A Yes.

[fol. 268] Q Now did you at any time hear any officer, any police officer tell any of these six defendants to get up off the ground?

A No, I didn't.

Q Did you hear any officer tell the six defendants they were under arrest?

A No.

Q Did you hear any officer at any time attempt to disperse the crowd?

A Before that, about—

Q I'm talking after, I'm talking about at that period after they had been—

A Oh, no, not at that period, no.

* * *

[fol. 269] MR. WEISGAL:

* * *

You heard no officer attempting to disperse the crowd, is that correct?

A That's correct.

Q Now, were you carrying a sign?

A Yes, I was.

Q What did the sign state?

A It said "Why is the U.S. in Viet Nam, really why?"

Q After these six defendants had been evicted were you standing in the—

MR. LIPSON: Objection.

MR. WEISGAL:

Q Where were you standing?

A I was standing on the grocery store side of the recruiting office, about the middle of the pavement.

Q Were you standing next to picketers or standing [fol. 270] next to onlookers?

A I really didn't see any picketers. I was standing next to the onlookers.

Q Did you still have the sign in your hand?

A Yes, I did.

Q Were you afraid of being injured?

A No.

Q Did anyone make any threats to you?

A Oh, no.

Q Did anyone curse you?

A No.

Q Did you hear anyone threaten any of the demonstrators?

A No, I didn't.

Q Who were on the ground?

A No.

Q What was the crowd doing?

A Well most of them were trying to get a look at the six demonstrators who were being thrown out.

* * * *

[fol. 271] CROSS EXAMINATION BY MR. LIPSON:

Q Miss Reardon, how old are you?

A I'm 23.

Q 23? Now when these gentlemen were put out, where were you standing with regard to them?

A I was facing them. I was standing on the grocery store side.

Q Were there people in front of you?

A Yes, sir.

Q Approximately how far were you from the closest of the demonstrators that were on the ground?

A I'd say about two yards.

Q Two yards? Six feet. How far were you from the furthest of the demonstrators?

A Well I couldn't see the furtherest one. The furtherest one, if he was at the recruiting station—

Q You say you were about two yards from the closest of the demonstrators that was on the ground?

A Right.

Q But there was people in front of you?

A Right.

[fol. 272] Q How many people would you say?

A I couldn't really estimate how many people but if you want to know the thickness, it was two people thick.

Q Two layers of people?

A Right.

Q Singing going on?

A Well, not right away. After a few minutes.

Q How long did they sit on the ground incidentally?

A It couldn't have been more than three minutes I don't think.

Q Did you ever see anybody keep them from getting up on their feet?

A I wasn't in a position to see that because I couldn't see. I could see between the crowd, that's the only reason I saw Harding.

Q You never saw any policeman holding them down and preventing them from getting up?

A I couldn't see that from where I was. There was people around all, around me.

Q But you saw policemen?

[fol. 273] A Well I saw them there and here in the crowd but I really didn't see the policemen who were throwing the six out.

Q I'm not talking about the policemen, as you say were throwing the six out. How about the policemen standing around in the crowd? This closest person you say was five to six feet away. Did you see anybody standing over him and keeping him from getting to his feet?

A I didn't notice any policeman at all because I really wasn't looking at that.

Q But there was singing going on?

A Yes, after a few minutes.

Q And these boys on the ground, were they singing too?

A I couldn't say, I don't know.

Q You couldn't tell whether they were talking or singing?

A No, I couldn't because I said I could only see Dave's arm.

Q You saw his jacket?

A His jacket, yes.

[fol. 274] Q Do you know Dave?

A Oh, yes.

Q You know the rest of the boys?

A Yes.

Q How long have you known any of them or all of them?

A About nine months.

Q The police at no time interfered with your right to picket there, did they?

A No.

Q They let you march back and forth as you pleased, is that correct?

A Yes, sir.

. . . .
MICHAEL KORT,
. . . .

[fol. 275] DIRECT EXAMINATION BY MR. WEIS-
GAL:

Q Are you a student at Hopkins?

A I graduate this week.

. . . .

Q Were you one of the participants in the demonstration on March 28th?

A Yes, sir.

Q What time did you arrive there?

A About three o'clock.

Q Was the demonstration peaceful and orderly?

A Yes, sir.

Q Did you see these six men, six defendants go into the recruiting station?

A I saw some of them go in. I saw some of them go in, not all of them.

Q You continued walking around while they were inside of the office, is that correct?

A Yes, I was walking around for part of the time.

Q Directing your attention to approximately five [fol. 276] o'clock, did anything unusual happen at that time?

A The defendants started coming out of the recruiting office.

Q You saw them coming out? In what way?

A They were being thrown out of the recruiting office forcibly.

Q What happened to the picket line while they were being thrown out?

A The picket line had to break because they were thrown into the middle of the line. It broke up.

Q Were you carrying a sign?

A No, I wasn't.

Q Were you distributing leaflets?

A Yes, I had been distributing leaflets to several spectators.

Q Were you going around throughout the crowd distributing leaflets?

A I had been talking with the crowd and distributing leaflets.

Q At any time did anyone threaten you?

A Nobody threatened me.

[fol. 277] Q Did anyone attempt to strike you?

A No, sir.

Q Did you at any time hear the police attempt to disperse the crowd?

A No, sir.

Q Did you hear the police give the six demonstrators any instructions whatsoever?

A No, sir.

Q In other words, they did not say get up off the ground?

A I didn't hear them say it.

Q Were you close enough to have heard them if such an instruction would have been given?

A There was a lot of noise at the time, I couldn't be sure. It was hard to hear anything.

* * * *

[fol. 278] Q How close were you to the closest police officer?

A At the time when the demonstrators were thrown out?

Q Yes?

A I wasn't very close to any of them. I was in the [fol. 279] middle of the crowd of people.

Q Then what did you do then?

A There was singing going on. I was singing.

Q What was the crowd doing?

A Some people—

Q The onlookers?

A Some of them were saying nothing, some of them were chanting "Bomb Hanoi". That was all that was going on.

Q You were standing next to picketers or onlookers?

A I was next to both. There were picketers and onlookers around me.

Q There was no threat to your safety, was there?

A There was no threat at all.

Q Did you see any officer going around and talking to the six defendants who were sitting on the pavement?

A No, I didn't see them. I didn't see any officer talking to any of the demonstrators.

Q Did you at any time hear—did you at any time see any of the defendants lying down on the ground?

A No. Every time I saw them they were sitting. Nobody was lying down.

* * * *

[fol. 280] CROSS EXAMINATION BY MR. LIPSON:

Q Now with regard to your last answer, that any time you saw them they were sitting up, obviously this infers there were times when you didn't see them, is that correct, because of the crowd?

A No, I was always watching one or another. I wasn't watching every demonstrator all of the time.

Q In other words, there were times when you didn't have your eye on any of them, is that correct, or some of them?

A There were times when I wasn't watching all six of them.

Q You can't honestly state what they were doing all during this period of time?

A No. It's just that every time I saw any of them they were sitting.

Q When with regard to the time they were placed on the sidewalk did you first see them, immediately?

[fol. 281] A I saw them getting ejected from the office. I saw them come out.

Q Your testimony is you never saw any police officer directly around them, is that correct?

A No, I said I didn't see any officers around me.

Q How about around them?

A There were officers standing around. I saw one officer whose hand, was holding Mr. Rudman.

Q Continually holding him?

A Yes, he had his hand on his shoulder.

Q Did he hold him down, restrain him?

A He had his hand on his shoulder.

Q Did you ever see Rudman prevented from getting to his feet?

A No, I just saw the officer with his hand on his shoulder.

Q Did you ever see any officer with their hand on any other shoulder?

A No, I didn't. At that point I was watching Mr. Rudman.

Q At that point?

[fol. 282] A Yes, sir. Well I didn't see any of the officers, I was concentrating on him.

Q There was a police officer around Rudman. You can't say you saw police officers around the others?

A No. There were police officers near the others but I wasn't watching that carefully.

Q What were the police officers—You weren't watching that carefully, is that what you said?

A I wasn't aware of the fact I was going to be testifying. Otherwise—

Q You weren't paying particular attention?

A No. I watched simply—I was not able to notice what was going on with all six of them at all times, it was impossible.

Q How close were you to the closest demonstrator?

A Oh, probably five or six feet.

Q And from the furthest demonstrator?

A Ten feet, maybe.

Q It was noisy?

A Yes, it was noisy.

Q You were singing?

[fol. 283] A Part of the time.

Q It's possible they could have been addressed by a police officer and you wouldn't have heard it, is that correct?

A It's possible.

Q But—

A But it didn't look it.

Q You just testified that you weren't paying that particular attention to everyone?

A No, it was impossible to do that.

Q Granted. How far were these boys separated from one another?

A They were fairly close to one another, within a few feet. So more close to the curb and some were in the middle of the sidewalk. They were spread out maybe over a distance of several feet.

Q Several? Almost the entire distance of the sidewalk?

A I'd say they covered about sixty percent of the sidewalk. At any one time. At that point the crowd covered the whole sidewalk. It was impossible to walk [fol. 284] through the crowd because it was ringed around the defendants.

Q That crowd consisted at least partially, maybe to a large extent, of picketers like yourself, is that right?

A They were partially picketers and partially onlookers. I'd say it was fairly even distribution. There was a lot of spectators around.

Q Where were you in the line with regard to people being in front of you?

A At the time of the picketing?

Q Yes?

A During most of the picketing I was giving out leaflets and talking with spectators.

Q I'm saying after the point they were put on the sidewalk where were you in that line that was ringing them as you stated?

A I was probably two or three feet deep from the end. But there was nobody particularly tall in front of me either. I could see fairly well.

Q You are friendly with all of these boys, are you not?

A Yes, sir.

[fol. 285] Q How long have you known them.

A Some of them four years, some between two and four years.

Q You have attended college with them, is that correct?

A Yes, sir.

* * * *

[fol. 286] Q The police allowed you to picket or hand out leaflets without bothering you, is that correct—didn't interfere with you in any way?

A No, they didn't interfere with me. I understand there was some difficulty on the line with being room for everybody.

Q Who is everybody?

A Well at times the line was a little bigger than the space that they wanted but I was following that. I was never interfered with. I was moving from point to point.

Q Where was Mr. Rudman sitting as you recall, Mr. Kort?

A He was fairly close to the curb.

Q Did you see him from the time he was taken out of the building?

A I saw him come out, saw him thrown out and then the next time I looked at him he was sitting and there was an officer with his hand on his shoulder.

[fol. 287] Q Did you at any time see Rudman attempt to crawl into the building, get back inside the building?

A I wasn't watching him all the time. As each person got thrown out I would look for the next one, and couldn't, didn't watch them as they hit the ground because I was waiting for the next person to come out.

Q With the exception of Rudman, did you at any time see any of those during the time that they were on the ground make any effort whatsoever to get on their feet?

A Well, when Mr. Harding was thrown out—

Q The question is did you see any of them make any effort to get on their feet?

* * *

A They weren't on the ground very long and since some of them landed pretty hard, in particular I noticed Mr. Harding and Mr. Heimbach, they looked kind of shaken—I noticed Mr. Harding in particular because his glasses had fallen off.

[fol. 288] MR. LIPSON: I don't think the answer is responsive at all. The question was, did you at any time see any of them make any effort to get on their feet?

A No, I did not.

Q They were on the ground how long?

A Probably three or four minutes. From the time the first one came out to the time they were carried to the wagon.

Q You testified—

MR. WEISGAL: From the time they came out to the time they were carried away, is that what you said?

A Yes.

* * *

Q You saw no one restrain these boys from getting [fol. 289] on their feet?

A No, I didn't. But I also—

* * *

RUST GILBERT,

* * *

[fol. 290] DIRECT EXAMINATION BY MR. WEIS-
GAL:

Q Mr. Gilbert how old are you?

A 20

Q Where are you employed?

A Union For Jobs or Income Now.

* * * *

[fol. 291] Q Now did you have occasion to be at this demonstration on March 28th at Greenmount Avenue?

[fol. 292] A Yes, sir.

Q Was it a peaceful demonstration?

A Yes, sir.

Q Was it an orderly demonstration?

A Yes, sir.

Q Directing your attention to sometime about five o'clock in the afternoon, did anything unusual happen?

A Well the demonstration broke up, because, well it was broken up by the police who stopped the picket line in order to take some people out of the recruiting station which was being picketed.

Q Were they taken out?

A One of them was pushed out, the rest were carried out.

Q And what happened to them when they were carried out?

A They were dumped into the middle of the sidewalk inside the ring of policemen.

Q How close were you to the demonstrators while they were on the sidewalk?

A Well I was only several feet from the closest demon-
[fol. 293] strator. The ring itself was about six or eight feet wide, so at the most I was maybe ten feet.

Q At any time did you hear any police officer tell them, tell these demonstrators to get up?

A No, I did not.

Q Did you ever hear them tell them they were under arrest?

A No, sir.

Q Did you at any time hear the police attempt to disperse the crowd?

A Not until they had taken all the people they arrested into the paddy wagon, and that was sometime after five o'clock. At no time during the demonstration did they try to disperse any crowd.

Q Where were the police standing with respect to the demonstrators who were on the ground, if you know?

A Well they were standing in a ring. There was some police standing in a ring around the demonstrators and there were other police, a few other police in the crowd.

Q Now were you carrying a sign?

A Yes, at one time. Several times.

[fol. 294] Q After the ring formed around the six men on the pavement, who were you standing next to?

A I was standing next to a police officer.

Q Did anyone in the crowd attempt to molest you at that time?

A No, sir.

Q Were you standing close to any of the onlookers?

A Very close, rubbing shoulders. We were all mixed in together, policemen, demonstrators and onlookers.

Q Were you saying "Bomb Hanoi", or "We Shall Overcome"?

A I believe I was singing "We Shall Overcome".

Q You think it would have been possible for you to have heard any orders given by the police?

A Yes, sir.

* * * *

CROSS EXAMINATION BY MR. LIPSON:

Q Mr. Gilbert, you know any of these six defendants?

A Yes, I know all of them.

[fol. 295] Q How long have you known them.

A A year and a half, two years.

Q How have you come to know them?

A Some of the demonstrators worked with me in different projects and I have worked with them on others.

Q How come you went to this demonstration on that day? Why did you go there?

A Because I wanted to participate in the demonstration.

Q Did any of these six defendants tell you about it or invite you to come?

A None of these gentlemen here I don't believe. Although I may have talked to them. I talked to several before the demonstration.

Q At no point did the police interfere with your right to picket around this place, did they?

A No, sir. The police let us go pretty much any way we wanted to in and out of the recruiting station, go through the line, across the street. They made no real attempt to—

Q I think you have answered my question. Thank you. [fol. 296] When you first saw these boys taken out, is it my understanding that you testified that they were placed in a ring?

A Well, no, sir. There was a ring of policemen. There was more a double line than a ring of policemen, on both sides of the demonstrators. The demonstrators themselves were just dropped on the sidewalk in sort of a pile.

Q Did they ever change their position from the time that they were dropped?

A Yes, sir. I saw in particular people move about on the ground.

THE COURT: I think the question is did they move upward or downward; did they do anything to get up?

A I don't think they could.

MR. LIPSON:

Q Well now, did they move at all

A Yes, sir. May I explain? I remember David Harding was carried out and dropped on the back sort of and he pulled his legs up in front of him a little bit and sort of twisted his position but he was, he sat on the ground I guess because the police officer had his hand on him.

Q Had his hand on him?
[fol. 297] A Yes, as I remember.

Q Where was the hand on him?

A On his shoulder.

Q How long did it stay there?

A I didn't—As I remember Mr. Harding was being restrained throughout. The policeman had his hand—

Q Throughout the entire what?

A Throughout the entire time I saw Mr. Harding, from the time he was dropped to the time I believe he was carried off.

Q How long was that?

A I would estimate that would be about five minutes.

Q But no one else, just Harding?

A No, I just talked about Harding. Mr. Harding is the individual I watched most during that period.

Q Is that to mean you weren't paying any particular attention to some or all of the others?

A Like I say, I couldn't watch everybody. I remember I watched Mr. Harding because he looked like he had been roughed up, you know, he was hurting from being dropped.

Q Is that what he looked like to you?

[fol. 298] A He had a pained expression.

Q A pained? Now how far back were you from the closest demonstrator?

A Well, a foot or so. I mean the police, we were all right up there with each other. The Police, the crowd and the people who had been picketing. And I was right up against one of the demonstrators, pretty close to one of the demonstrators. I was in a position where I could watch David.

Q But how many back? Were there two or three files or rows in front of you?

A No, there was—it was so close together that rows aren't really meaningful. We were all in there tightly together, sort of side by side.

Q What were you singing?

A "We Shall Overcome". But we didn't sing that throughout the entire demonstration.

Q Well during this three to five minute period that the boys were out front, how long did you sing "We Shall Overcome"?

A Not all of the time.

Q Did you sing other songs?

[fol. 299] A No, I don't think so.

Q There was considerable noise there?

A There was some noise, cars going by and people were talking and we had been singing.

Q I take it then since you had your attention specifically pointed to Mr. Harding, you mentioned you didn't pay too much attention to the other five—I take it this would mean you didn't pay that much attention to all or any of the police officers is that correct?

A Well, no, sir that's not—Would you repeat the question?

QL Let me rephrase it. How many police officers were there?

A At different times there were different numbers. I would have to say there were about twelve around the line, you know, sort of ring, double line.

Q You weren't paying attention to all twelve or anyone in particular, were you?

A I saw them there, that's all I can say.

Q But you weren't keeping your eye on all of them at the same time?

[fol. 300] A I couldn't do that.

Q You couldn't say whether or not they approached any of the group all during this three to five minute interval and said anything to them, could you?

A Well, it's possible while I was, you know, watching one demonstrator, that the policemen were talking to another demonstrator, but I watched—I was aware of what was going on. I had a sense of what was going on in the thing and I'm quite sure—

Q Why did you—

MR. WEISGAL: Let him finish the answer. You're quite sure what?

A I'm quite sure that no policeman made any effort to tell people to get up.

MR. LIPSON:

Q How are you so sure of this? You testified there was singing?

A Yes.

Q There was noise?

A Yes.

Q And you were paying particular attention to Harding [fol. 301] and not to the other five or twelve policemen? How are you so sure then? There were other people in the crowd, were there not?

A Yes, there were other people in the crowd.

Q How are you so sure?

A Well I'm sure because I was right up close to the demonstration and I was standing right behind one of the demonstrators and if a policeman had come and said to anybody, without reaching down and whispering in his ear something, I would have heard it. I really would.

Q But you weren't watching, you were paying particular attention to Harding?

A I was paying attention to Harding but I saw enough—Let me go back. When people were taken out of the station I watched each of them being carried out or pushed out or whatever. I watched the whole thing. It wasn't like, you know, it wasn't a spectacle. There were six people on the ground and there were a number of police officers with these people and it was something you could watch the whole thing, even though you might be struck with a particular individual. You might re- [fol. 302] member something particular about one demonstrator.

Q Where were these two Marines that were in the crowd?

A They were—I remember talking to two uniformed Armed Services people. I think one of them was Marine and one was an Army private because I had leaflets—I marched on the picket line and I talked to individuals, onlookers. I remember talking to a couple, like I say, uniformed members of the Armed Services about Viet Nam. We had a discussion.

Q What did the Marines say when you approached him?

A I don't remember if it was a Marine like I said. And I just remember that I had gave—this was earlier, this was during the picketing I'm talking about now. I remember handing leaflets to these two servicemen and talking to them about Viet Nam.

Q What was their respective response to your handing them a leaflet?

A Well they didn't really want to talk about it that much.

Q Did they say anything else?

[fol. 303] A I don't remember exactly what was said.

. . . .

All I remember he didn't want to discuss it. He took the leaflet. I don't remember exactly what he said. He wasn't happy about the demonstration.

MR. LIPSON:

Q What did he say?

A I don't remember exactly. General things about Communists and something.

Q What do you mean he wasn't happy about the demonstration?

A He didn't act like he was going to do anything. He didn't do anything but he didn't look happy about it.

Q Was he sad?

A No, he looke angry.

Q He looked angry?

A Yes, sir. But he didn't—I mean it was a controlled thing, you know, very controlled. He wasn't sure what was happening. This was something knew to him. I hope he went home and thought about it.

. . . .

THE COURT: Did the Marine say, I do not care to engage in discussion?

. . . .

A I don't remember if it was a Marine. I remember talking to a guy in a green uniform. He wasn't Army or he might have been a Marine. There were a couple of service men around who said they were service men.

MR. LIPSON:

Q Your freedom to picket was not in any way impaired, was it, during the whole course of the afternoon?

A No, we were allowed to picket throughout the afternoon. We were allowed to hand out leaflets.

Q The police were there during that time?

A I got there earlier.

Q What time did you get there?

[fol. 305] A I got there about fifteen minutes before the demonstration was supposed to begin.

Q What time was that, do you recall?

A 2:45 I'd say.

Q All during this time there were police there, is that correct?

A That's correct. There were police on the street and police sitting in cars on Greenmount Avenue.

Q They allowed you to picket in this area?

A Yes, sir.

. . . .

MR. WEISGAL: No further questions. That is the case for the Defense.

. . . .

[fol. 307]

June 13, 1966

. . . .

[fol. 318] THE COURT: Members of the Jury, the Court has granted the State's motion to put on one rebuttal witness.

. . . .

JOHN FOGARTY,

. . . .

DIRECT EXAMINATION BY MR. LIPSON:

Q Mr. Fogarty, how old are you?

[fol. 319] A 22.

Q What is your educational background?

A I graduated from the University of Baltimore.

Q What was your major there?

A Bachelor of Science in Marketing.

Q Are you employed?

A Yes. Baltimore News American.

Q What is your capacity with the Baltimore News American?

A I'm a reporter, mainly I cover police reporting. That's my main job. Also general assignments but most of it is police reporting.

Q I would ask you to try to keep your voice up. Mr. Fogarty, specifically now calling your attention to Monday March 28th, 1966, did you have occasion on that day to go to 3328 Greenmount Avenue?

A Yes, I did.

Q What was the purpose of your going there?

A At the time I was at the Southwest Station, the City Desk called and told me to go that address because there was a demonstration planned. We were notified [fol. 320] by phone apparently that there would be a demonstration protesting government policy in Viet Nam. Several college students, students from several colleges were suppose to put this demonstration on.

Q Did you go there with anyone or by yourself?

A I went by myself.

Q Did you meet anyone from the News American there at the time?

A There was Jim Lally of the photographers was there and another reporter from the News American but he was off. He stayed for a while and left. It was Toby Joyce.

Q Approximately what time did you arrived, Mr. Fogarty?

A About 2:30. It was a half hour before the demonstration started.

Q Calling your attention specifically to the period shortly before 5 p.m.—

A Yes.

Q —I'd like you to tell his Honor and the ladies and gentlemen of the jury what you observed at that time, if anything?

[fol. 321] A Approximately, I think it was almost exactly 5 p.m., the sergeant who was in charge of the recruiting station was closing. At that time there were six demonstrators who had been staging a sitin since about, I guess twenty after 3 or twenty-five after 3 when they finally went in and sat down. At this time U. S. Marshalls and some of the police officers carried the demonstrators out the front door and set them on the pavement.

Q Can you be more specific when you say sat them on the sidewalk? What was, what specifically do you mean?

A Well when they picked them up inside, I was outside the building when they came through the door. The police and marshalls were kind of bent over and they had them maybe this far off the ground. They didn't lift them very high.

MR. WEISGAL: Would you note for the record that indicates approximately a foot.

A I would say less than a foot. Maybe more likely they were just about clearing the ground when they brought them through the door.

MR. LIPSON: His hands have indicated a distance [fol. 322] of approximately six inches for the record.

A Right. When they got outside they bent over even further and set them, actually set them down on the pavement. They were not dropped, in other words.

Q On what part of their anatomy?

A On their rear.

Q You say they were not dropped?

A They were not.

Q In what formation, what order were they deposited on the sidewalk, if any?

A Didn't seem to be any formation. They were brought out and the first ones out were brought furthest away from the door and set down.

Q Did you at any time see any of the demonstrators thrown on top of one another?

A No. Actually they were not even really close to each other except two of them. There were two, the first two that were brought out were close to the curb and the other ones were scattered.

Q What happened from that time on, Mr. Fogarty, after they were put on the sidewalk?

[fol. 323] A Well they just sat there. The other demonstrators, who were outside picketing, had to stop, they couldn't walk by. The crowd started getting rather noisy when they were carried out and the police, all I could see was that one police sergeant, over there—

Q Do you know him by name?

A Sgt. DiCarlo.

Q You pointed to him in the courtroom?

A Right. I know him from the Northern District. I covered up there. He walked around and talked to several of them. I don't know if he talked to each one individually. I saw him talk to at least two. I couldn't hear what he was doing. You couldn't hear from where I was.

Q What happened then?

A Then I guess they were sitting there maybe about fifteen or twenty minutes.

Q You say fifteen or twenty minutes?

A At least because the police talked to them, the one sergeant anyway, and then he walked away and the other police were holding the crowd back and finally they got, some officer had picked one of the demonstrators up [fol. 324] and took him across the street to the cruising patrol when it pulled up.

Q Did you at any time see any of these gentlemen attempt to get up, any of the demonstrators?

A No.

Q Did you at any time see any police officer restrain any of the demonstrators from getting up?

A No. There were no police officers, other than when they brought them out, set them down. The only policemen I saw anywhere near them at that time was Sgt. DiCarlo. He was walking around talking to some of them.

Q After they were deposited on the sidewalk, what type of formation, if any, was formed on the sidewalk? Can you describe it?

A If anything it would be kind of a crude circle.

Q With regard to this circle, where were the six demonstrators?

A You mean—It wasn't a complete circle. There were a few here and so up in the upper corner and some, if I can remember over like the door of the building would be here. There would be a couple here and the [fol. 325] ones I remember most were down in front by the curb. There was an Army recruiting sign and they were some ten feet away from the Army recruiting sign.

Q You speak of the police officers restraining the crowd, is that correct?

A Right.

Q Where were the police officers with regard to this circle?

A Well they would be outside—The crowd was, the picketers stopped south of the building when the boys were sitting there. They couldn't walk by, so they stopped. So the picketers were here, the crowd was in front on Greenmount Avenue. Actually partially standing in the street. And then the other part of the crowd was north of them and the police were in front of the crowd between the demonstrators.

Q What if anything was the crowd doing at this time?

A At that time they were kind of jeering and calling the kids sitting there names. Every once in a while they started chanting, things like "Bomb Hanoi", "Bomb [fol. 326] Peking". They were pretty much—I think some of them were trying to spit at them, at the demonstrators. They weren't a very quiet crowd. They were, I wouldn't say a mean crowd but they were rather noisy, they were making all kinds of remarks.

Q You say the police were restraining them. What specifically do you mean by that?

A Well they had to line up. Not arm in arm but they had policemen spaced around separating the crowd from the demonstrators I guess * * *

* * *

Q Now with regard to the circle and the demonstrators, where were you located, Mr. Fogarty while this was going on?

A Two locations. First when they were bringing them out I was north of the building in the front row of the crowd. After they were brought out and set down I moved to the front of the building on Greenmount Avenue. I was shielding for one of the photographers.

Q How close were you to the demonstrators or any [fol. 327] one of them?

A To the two nearest the curb I was approximately ten feet.

Q Was anybody blocking your view?

A No, because I had to open the crowd for one of our photographers when they were ready. When the police picked the first one up I kind of elbowed my way in to let him get a shot. There was nobody in my way.

Q Now you have testified that you saw the police talking to at least two of the demonstrators. Did you overhear any conversation at all between the police and the demonstrators while you were here?

A No, it was impossible to hear.

Q You could not hear?

A No, because of the crowd. All I could see them was talking and making motions.

Q Are you talking about Sgt. DiCarlo?

A Yes, sir.

* * * *

[fol. 328] Q How much before the boys were carried away did this conversation take place?

A The conversation took place right after they were brought out, when he was walking around talking to them. So I guess they were sitting there, a good ten minutes after he talked to them. He might have talked to them the first five minutes moving around and then he just walked away.

Q How close was Sgt. DiCarlo from these people he was talking to when he was talking to them?

A Well, he would be—They had been sitting and he would like be standing at their feet and talking to them.

Q Were they looking at him?

A Some did, some didn't. I remember the two closest to me, when he walked over to them, they looked up at him. There were others that just looked down and never [fol. 329] looked up during the whole thing.

* * * *

CROSS EXAMINATION BY MR. WEISGAL:

Q Who is this man here?

A That's our court reporter for the News American.

Q A few seconds before this case started you were sitting here on the bench, is that correct?

A Yes, sir.

Q He came over and spoke to you?

A Yes, sir.

Q What did he say?

A Good morning to me.

Q He said Good morning to you?

A Yes.

Q What else did he say?

A Nothing.

Q I'm talking about two minutes ago?

A When he walked by me?

Q When he walked out of the judge's chambers, what did he say to you?

[fol. 330] A He said the judge has got to rule on whether or not you can testify.

Q He came out and told you that, is that correct?

A That's correct.

Q How did you happen to get in conversation with him, Mr. Fogarty?

A I was reading the paper Friday, there was a story about the case in the paper.

Q You were reading his story?

A I imagine it was his.

Q What happened then?

A He and I were discussing—I asked him if the case had been ended that day because the story was just, it didn't have any conclusion. I said, what happened? He said the case is still, it's held over until Monday. And then he told me that during the course of the day, this was not in the story—he didn't say who—but there was testimony given that the police had dropped demonstrators and had stopped them from getting up.

Q Did he tell you any other testimony?

A No. That was—He said also there was something [fol. 331] to the effect there was some type of testimony the police never said the boys were under arrest. But I told him I covered the story. As far as the police holding them down or police dropping them, it's not true.

Q He told you—

MR. LIPSON: Let him finish.

THE COURT: Mr. Weisgal, you interrupted. You asked him about the conversation. Let him finish.

MR. LIPSON: Continue, Mr. Fogarty.

A Go on with what we talked about Friday?

MR. LIPSON: Before you were interrupted.

MR. WEISGAL:

Q You were starting say there was, he told you about testimony—

A He told me—

Q That the police—

A Testimony the police were holding them down, they were dropped.

Q What else?

A I said to that, to those two points that I covered the story, that was not true because I saw it myself, [fol. 332] that the police didn't drop them.

Q You saw the whole thing?

A I was there the whole time. He also mentioned there was testimony to the effect that the police never told the demonstrators they were under arrest. I said I didn't know because I couldn't hear.

Q What else did he tell you.

A He just said to me, would you be willing to testify to that in court if they wanted you to. I said, sure.

Q What did he do?

A He called me later in the night that he had talked to the State's Attorney.

Q They wanted to do what?

A They wanted me to come here this morning.

Q And testify?

A Right.

Q And what was your other conversation with him?

A After that, that was it. I talked to him Friday night the last time until I saw him this morning. Then he told me the judge—First of all, when he came in this morning he said, Good morning, and when he came back [fol. 333] he said, after the conference in the room back there, he just said the judge has to rule on whether or not I could testify. He didn't say why.

Q Could you tell me who was the first of these demonstrators that was evicted if you were watching this whole thing?

A I would think it's the boy in the blue shirt.

(A juror asked "What was defense counsel's question?")

THE COURT: Repeat your question. You dropped your voice.

MR. WEISGAL:

Q Who was the first person to be evicted?

A To the best of my knowledge the boy in the blue shirt. He was the one who was closest down on the curb. Of course they all got haircuts too, they have changed quite a bit in the last two months.

* * *

[fol. 337] Q What happened to the picket line after the men were evicted?

A When they were sitting on the pavement?

Q That's correct.

A It stopped.

Q Where were you at that point?

A At the time they were evicted I was north of the building, on the pavement.

* * *

[fol. 338] Q You were there the entire time, is that correct? You so testified?

A That's true. I was there before it started.

Q You were there before it started and you were there until the very end?

A Right. I left at the same time the other demonstrators broke up.

* * *

[fol. 342] Q Where do you think you were approximately 5:05 Mr. Fogarty?

A I think I was probably north of the building.

Q You were north of the building?

A Right where the glass ends. I would have been —there is another store. I was up by that wall.

* * *

[fol. 343] Q Where were you standing when the first demonstrator was brought out of the building?

A North of the building.

Q Still north of the building? Where were you when the second demonstrator was brought out of the building?

A Still north of the building.

Q The third?

A At that time, about that time I started to move.

Q Where did you move then?

A Down toward the front of the building.

Q You just testified before that you were right in front of the building because you were going to push through the crowd to make way for a photographer to [fol. 344] take a picture?

MR. LIPSON: Object, your Honor.

A No.

* * *

Q Approximately what time was the first defendant brought out of the recruiting center?

A Approximately 5 p.m., a little after 5. A minute or two after.

Q You were north of the building, is that correct?

A Yes, to the best of my knowledge.

* * *

MR. WEISGAL: State's Exhibit Number 9, your [fol. 345] Honor.

* * *

[fol. 346] Q Does this accurately depict the crowd that was in front of the recruiting station when these men were being evicted?

A Well there was more a crowd back here.

Q More of a crowd where?

A Out of the picture.

Q In the street?

A Yes.

Q Where were you standing?

A I don't know where I was standing when this picture was taken.

* * * *

[fol. 347] Q Now you say the demonstrators sat out on the pavement for at least fifteen to twenty minutes?

[fol. 348] A At least fifteen.

* * * *

Q What was the conduct of the demonstrators or pickets on the outside prior to these six defendants being evicted from the building?

A They were picketing, marching around.

Q Was it quiet?

A The demonstrators were quiet.

[fol. 349] Q Was it orderly?

A Yes.

Q Now you say you saw all six of the men carried out of the recruiting center?

A I cannot actually say I saw all six.

Q How many would you say you saw?

A Four.

Q You saw four of them carried out?

A Yes, sir.

Q According to you the highest that anyone was dropped was from this—

A I didn't say anybody was dropped.

Q No one was dropped? In other words, they were carried approximately this high off the pavement?

A Approximately six inches when they were brought through that door on out to the street.

Q You were close enough throughout this entire time to see these four men at least brought out of the building, is that correct?

A Yes.

* * * *

[fol. 350] Q Mr. Fogarty, at any time did you hear [fol. 351] the officers attempt to disperse the people who gathered around to watch the demonstrators who were sitting on the pavement?

A They tried to keep the crowd moving earlier but at the actual time the demonstrators were sitting down I did not hear any of that, no.

Q Now did you hear any of the demonstrators use any obscene language or make any uncalled for remarks? I'm talking about these six specifically?

A Those six specifically? As far as I can see, when they were sitting down, they did not say anything.

Q You say the crowd was jeering and calling names and they were trying to spit at the demonstrators?

A That's correct.

Q Did you see any officers try to move those people away?

A They tried to keep them back. As I said before earlier they were trying to keep them moving.

Q I'm talking about after they had been taken out?

A When they were sitting there they tried to keep the crowd back.

Q Did anybody try to bust through?

[fol. 352] A Not that I saw, no. I mean the people, like at the back of the crowd would be pushing to see what was going on up front and you could feel it from the back.

Q You could feel it? Where were you at this time?

A At the time right before they were removed I was right in front of the station.

Q Were right in front? Who was pushing you?

A People that were behind, the people who had come like from across the street.

Q What were they trying to do?

A They were trying to see what was going on, I guess.

. . . .

REDIRECT EXAMINATION BY MR. LIPSON:

Q You mentioned north of the building as your position several occasions?

A Right.

Q How far away from the picketers or the people sitting on the ground is this north of the building as you [fol. 353] described?

A Where I was was maybe about two or three feet away from the end of the window. They have a big,

there's a big plate glass window and I was like two or three feet north of that and my distance from the demonstrators, from the door, would had to be at least I guess it would be five or six steps that you have to take. Even more than that, probably more than that, seven or eight steps.

Q When you say north of the building—

A I was right at the end of the building.

Q The recruiting building?

A Right, that's correct.

* * *

RECROSS EXAMINATION BY MR. WEISGAL:

* * *

[fol. 354] Q What time did the paddy wagon arrive.

* * *

A I didn't actually look at my watch at the time. I can give you a rough estimate.

MR. WEISGAL:

Q Approximately?

A Between quarter after five and 5:20. That's why I said earlier it was fifteen to twenty minutes they were actually sitting there because I do know when I left the scene it was twenty-five after five because I looked at my watch, I had to go back in the office.

* * *

[fol. 355] Q Did you hear Lt. DiPino tell these men they were under arrest?

[fol. 356] A I couldn't hear anything that the police said.

Q You know Lt. DiPino, is that correct?

A When I see him. I don't know his personally other than to say hi to him.

Q Incidentally, when they were first brought out of the station, would you say you were up front so you could view everything properly?

A No. When they were first brought out of the station I was not in front of the door, no. I was at the north edge of the building.

Q You were at the north end of the building. Did you start breaking through in order to get to watch, to see what was going on?

A No. I came around and then went up.

Q You came around? In other words you went out into the street?

A No, no, walked straight down and make like a ninety degree turn.

Q In other words, you were up here approximately? How far up the street were you?

A When they were first carried out?
[fol. 357] Q Yes?

A Approximately where this Waverly Laundromat is, right there. This is not when they were first brought out.

* * *

Q Anyway, when they were brought out, the pickets were still moving around the line, is that correct?

A To the best of my knowledge when the first demonstrator was brought out the pickets stopped.

* * *

MR. WEISGAL: No further questions.
[fol. 358] MR. LIPSON: Thank you, Mr. Fogarty. That would be the State's rebuttal, your Honor.

* * *

WAYNE HEIMBACH,

* * *

[fol. 359] DIRECT EXAMINATION BY MR. WEISGAL:

Q Are you a student at Hopkins?

A Yes, sir.

* * *

Q What year are you in at Hopkins?

A Junior, Third year.

* * *

Q Wayne, when you were taken out of the recruiting office, who many of the other defendants were outside at this time?

A All five.

Q How many were taken out?

A I was picked up bodily and taken to the door, a little bit past the door, and thrown to the ground.

Q What happened then?

A Well there were some legs I did land on, somebody's legs, I don't know who. Just laying around. When I hit the ground I laid out flat about two or three seconds trying to compose myself. As soon as I did compose myself I sat up, looked around a little bit and pretty soon after that we were picked up and taken to the wagon across the street.

Q How long would you say you were sitting out there on the pavement, the longest?

A The longest, I would say three or four minutes at the longest.

* * * *

[fol. 361] CROSS EXAMINATION BY MR. LIPSON:

Q Why were you picked up bodily, Mr. Heimbach?

A I don't know.

* * * *

Q Isn't it true, Mr. Heimbach, that the reason you were picked up bodily from inside the recruiting office is because you refused to leave at the request of the recruiting sergeant and at the request of the U.S. Marshall and later the order of—

A Yes, that's true.

Q No further questions.

MR. WEISGAL: That would conclude the case for the Defense. The rest of the testimony would be cumulative.

* * * *

[fol. 362] (BENCH CONFERENCE)

MR. WEISGAL: I'd like to renew my motions for a judgment of acquittal.

THE COURT: Motion is overruled.

MR. WEISGAL: I'd like to note for the record that on Friday afternoon, in the Judge's chambers, we discussed requests for instructions. The Judge was given

a complete set of requests for instructions by Defense counsel. The Judge at that time refused all of the Defendant's requests for instructions with the exception of one, I believe, which reads as follows:

THE COURT: I am going to tell the jury that dis-[fol. 363] orderly conduct, with which they are charged, does not relate to anything that took place inside of the office. They are not charged with being disorderly there, which in effect is what you are asking on that charge.

MR. WEISGAL: That is correct. I would like to also point out this in effect deprives the defendants of procedural due process in that the law with respect to disorderly conduct is so vague, so indefinite, that there comes, it becomes impossible for defense counsel, without knowing what the Court's instructions are going to be, to properly argue to the jury.

THE COURT: I'll tell you right now, Mr. Weisgal. I don't think the law as to disorderly conduct is as vague as you would have the record make it appear to be. Disorderly conduct I think is clearly defined in the recent case of *Drews v. State*, which is controlling on this point. I intend to tell the jury that disorderly conduct is the doing or saying or both of that which offends, disturbs, incites or tends to incite a number of people gathered in the same area. It is conduct of such a nature as to affect the peace and quiet of persons who may witness it and who may be disturbed or provoked to resentment [fol. 364] because of it. A refusal to obey a policeman's command to move on, not to do say may endanger the public peace may amount to disorderly conduct.

Now you know what the definition is. It is not binding upon the jury under our law, purely advisory. Anything else you want for the record? Prepare to go the jury.

. . . .

[fol. 374] THE COURT: Members of the Jury, my charge to you in these cases will be rather brief. As all or most of you at least know under the constitution and laws of the State of Maryland the jury in the trial of a criminal case is the judge of both the law and the facts. Anything the Court may say to you about the

law is purely advisory. It is intended to be of some help to you but you are at liberty to reject the Court's advise on the law, to arrive at your own independent conclusions of the law if you decide to do so. Likewise, if I should make any comment on the facts, you are not bound by such comment in any respect. It is your function to pass upon the truth of the testimony as given by the various witnesses and the weight to be given their testimony. However, it is the duty of the Court in a criminal case to advise the jury on the law whenever such a request is made by counsel for either the State or the Defense. There has been such request in this case.

[fol. 375] Now there will be no indictment or other papers to be taken with you to the jury room. I simply invite your attention to the fact that each of the six defendants on trial before you today is charged with the the crime known as disorderly conduct. Therefor it becomes necessary that I advise you as to what is meant by disorderly conduct.

At common law there was no offense known by that term. In more recent times, however, the charge is contained in a statute known as Section 123 of Article 27 of the Maryland Annotated Code. The essential parts of this statute I will now read to you.

"Every person who shall be found acting in a disorderly manner to the disturbance of the public peace upon any public street or highway in any city, town or county in this state shall be deemed guilty of a misdemeanor".

That misdemeanor is known as disorderly conduct. In further amplification of the meaning of the charge, I instruct you that disorderly conduct is the doing or saying or both of that which offends, disturbs, incites or tends to incite a number of people gathered in the same [fol. 376] (Cont'd) area. It is conduct of such nature as to affect the peace and quiet of persons who may witness it and who may be disturbed or provoked to resentment because of it. A refusal to obey a policeman's command to move on when not to do so may en-

danger the public peace, may amount to disorderly conduct.

Now the facts in the case are to a great extent not in dispute. The six defendants apparently by prearrangement had decided to stage a demonstration and to go inside the recruiting office of the U.S. Army at 3328 Greenmount Avenue in Baltimore City. They arrived at the scene I believe somewhere around 3:15 or 3:20 in the afternoon of March 28th, this year. Apparently David Harding, one of the defendants was to be spokesman and the other five, as far as I recall the evidence, remained silent. The six walked into the recruiting station carrying signs or what they described as literature and requested Sgt. Grumley, the officer in charge, to allow them to place these posters in the window. I think there was also some reference to placing them or some of them on the walls of the recruiting station. Of course the recruiting station is a place where the U.S. Army invites [fol. 377] young men, sometimes older men, to come to volunteer their services for duty in the armed forces. The sergeant, under the regulations, could not permit this request of the defendants to be granted and he so informed them. They then proceeded to sit down or take their positions inside the recruiting station until it came time to close. In the meanwhile the sergeant called in, and the United States Marshall, Mr. Udoff, came out to the scene along with one or more of his deputies. At about five o'clock the office was being closed and the defendants were asked to leave. They refused. Thereupon, Mr. Udoff, the Marshall, called upon the police officers outside to assist him. I believe he said he deputized them temporary U.S. Marshalls and they proceeded to remove these six defendants from inside the recruiting station. There is some conflict as to the manner of removal but it is agreed that each of the defendants was carried out. Whether they were thrown out to the sidewalk or carried out and laid down there is open to some dispute. The fact is all six of them either lay down or sat down on the sidewalk outside the recruiting station and remained there. I believe it was said they did get to a sitting position but they did not

[fol. 378] get up. There is some dispute as to the testimony of two of the defendants who said that a police officer had his hand on the shoulder of one or two of them, but the fact is they did not get up but sat there singing.

After some interval of time the police officers, according to them, told them to get up and move on. The crowd which had already assembled outside was increasing and the police officers said they were apprehensive over the possibility of a serious public disturbance. That is the testimony of the State. At any rate these young men did not get up after being told, according to the State's witnesses. Upon their refusal to obey, the police called the cruising patrol, which arrived not long afterwards and the police officers then proceeded to pick them up once more and carry them across Greenmount Ave. to the cruising wagon, after having told them, according to the officer, that they were under arrest.

Now the defense in the case, as I understand it, is that the defendants take the position that they did not hear the command of the officers to get up and move along. If that is the case they had a right to sit on the sidewalk or in the case of one or two of them re-[fol. 379] strained there by the hand of the officer. That of course is for you to judge. The defendants contend that the police officers should have dispersed the large crowd rather than disperse the six individuals whose conduct had attracted the crowd in the first place. That is the issue for you to decide, whether they were acting in a disorderly manner.

If you find that they were beyond a reasonable doubt and to a moral certainty, then you should find each one of them guilty. If you find they were not acting in a disorderly manner, if there exists a reasonable doubt in the mind of anyone of you as to whether they were, in either of those events you should find the defendants not guilty.

You should not assume that the accused or any of them are guilty merely because they are being prosecuted or because criminal charges have been brought against them. The defendants come into court presumed to be

innocent and that presumption of innocence attends them throughout the trial. The State has the burden of proof that each of them is guilty beyond a reasonable doubt and to a moral certainty. This does not mean that the State has the burden of proving to a mathematical certainty that the defendants or any one of them are guilty [fol. 380] or that there is no possibility beyond the evidence than that of guilt. If the evidence is of such a character as to persuade the jury of the truth of each charge, that is to say of the charge against each defendant, with the same force that would be sufficient to persuade a member of the jury to act upon that conviction of truth in his or her own important business affairs or important affairs in his or her own life or career, then the jury may conclude that the State has met the burden of proof beyond a reasonable doubt and to a moral certainty.

You have the duty in a criminal case to determine the facts, pass upon the credibility of the witnesses, determine what evidence is reliable and trustworthy and what evidence ought to be disregarded as mistaken or unreliable. You are the judges of the law as I have told you before. It is likewise true that you have the ultimate responsibility for the determination of the issues in these cases with fairness to both the State and the accused.

Now your verdicts will be either guilty or not guilty as you determine to be proper. Your verdicts must be the unanimous verdict of all twelve members of the jury. [fol. 381] When you have agreed upon the verdict as to each of the defendants you follow the same procedure I know you adopted before, simply let the foreman tap on the door and inform the clerk or bailiff who will greet him merely that you have agreed. The foreman will not let it be known or intimate in any way at that time what the verdicts are for the verdicts have to be received for the first time in open court.

Counsel, you are invited to come to the bench to take whatever exceptions you care to the charge.

(BENCH CONFERENCE)

THE COURT: First the State.

MR. LIPSON: The State has no exceptions to the instructions.

THE COURT: Mr. Weisgal?

MR. WEISGAL: I except to the definition of disorderly conduct in that it is vague and abrogates the defendants' rights as guaranteed by the First and Fourteenth Amendments, of the United States Constitution. My second exception that the Court told me he would instruct the jury that conduct within the recruiting center is not to be considered by them as disorderly conduct. [fol. 382] There was no such instruction made.

* * *

[fol. 384] **THE COURT:** Members of the Jury, you will now retire to consider your verdicts.

* * *

[fol. 386] **THE COURT:** Take the verdicts.

THE CLERK: Donald Bacheller, Allan Green, Wayne R. Heimbach, David L. Harding, Daniel A. Klein, Daniel Rudman.

Members of the Jury, have you agreed upon a verdict?

THE JURY: We have.

THE CLERK: Who shall say for you?

THE JURY: Our foreman.

THE CLERK: Mr. Foreman, would you stand, please? How say you, as to Donald C. Bacheller, Appeal 456, is the defendant guilty or not guilty?

THE FOREMAN: Guilty.

THE CLERK: How say you as to Allan Green in Appeal 457, is the defendant guilty wherein he stands charged or not guilty?

THE FOREMAN: Guilty.

THE CLERK: How say you as to Wayne R. Heimbach, Appeal 458, is the defendant guilty or not guilty [fol. 387] wherein he stands charged or not guilty?

THE FOREMAN: Guilty.

THE CLERK: How say you as to David L. Harding, in Appeal 460, is the defendant guilty or not guilty wherein he stands charged?

THE FOREMAN: Guilty.

THE CLERK: How say you as to Daniel A. Klein, in Appeal 461, is the defendant guilty or not guilty wherein he stands charged?

THE FOREMAN: Guilty.

THE CLERK: How say you as to Daniel Rudman, in Appeal 462, is the defendant guilty or not guilty wherein he stands charged?

THE FOREMAN: Guilty.

* * *

[fol. 389] THE COURT: I think any comment by the Court may not be in the best taste at this time. The offense of which these young men stand convicted is one that can only have an adverse effect if there is publicity. By what type of mental processes they decided to go to the United States Army recruiting station, deliberately counteracting the effort of the government to get men to serve their country, by doing what they did and then demonstrating,—aside from the fact they drew the attention of as many people possible in the news media to their actions,—is something that I confess I cannot comprehend. I'm also aware of the fact that the design and plan of the whole thing was decided in advance as to what was to be done. It was decided that Harding would be the spokesman and the others would remain silent, and they did. I think this thing was well planned in advance, and was intended to focus as much attention as possible not only protesting the war in Viet Nam but at the efforts of the government to help continue that war as effectively and efficiently as possible.

If news of these series of events were brought to the attention of the men in Viet Nam I am sure it would be [fol. 390] bad for the morale to say the least. And they are college men, intelligent men who do things of this sort.

Well, I am prepared to impose sentence. Mr. Heimbach, is there anything you would like to say before sentence is imposed?

MR. HEIMBACH: No, sir.

THE COURT: Mr. Klein?

MR. KLEIN: No, sir.

THE COURT: Mr. Green?

MR. GREEN: No, sir.

THE COURT: Mr. Rudman?

MR. RUDMAN: No, sir.

THE COURT: Mr. Bacheller?

MR. BACHELLER: No, sir.

THE COURT: Mr. Harding?

MR. HARDING: No, sir.

THE COURT: Very well. As to each of you the sentence of the Court is a term of sixty days in the Baltimore City Jail beginning today and in addition a fine of fifty dollars. I direct that all costs be paid by the defendant in each of the respective appeals, including the [fol. 391] cost of the Municipal Court and Criminal Court of Baltimore City.

* * * *

163

STATE'S EXHIBIT 2

STATE'S EXHIBIT 3



165

STATE'S EXHIBIT 4

Malle Love
Not War

166

STATE'S EXHIBIT 5

JOHNSON
IS
GOLDWATER
IN DISGUISE

167

STATE'S EXHIBIT 6



STATE'S EXHIBIT 7

WHY
ARE WE
SUPPORTING
TORTURE,
KILLING
THE PEOPLE
OF
VIETNAM?
... TO PREVENT FREE ELECTIONS
PROTEST
THE
WHITE
HOUSE
President Lyndon B. Johnson
The White House, Washington, D.C.
GET THE STRONG MESSAGE
OUT

STATE'S EXHIBIT 8

169



170

STATE'S EXHIBIT 9



REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 52

September Term, 1967

DONALD C. BACHELLER, ET AL.

v.

STATE OF MARYLAND

Anderson
Morton
Orth
Thompson
Childs, E. Mackall
(specially assigned),
JJ.

Opinion by Anderson, J.

Filed: April 15, 1968

On April 19, 1966, the appellants were tried in the Municipal Court of Baltimore and convicted of disorderly conduct in violation of Article 27, section 123, Maryland Code (1967 Repl. Vol.). Appellants were each sentenced to a term of sixty days in the Baltimore City Jail and fined fifty dollars plus costs. An appeal was duly noted and a trial *de novo* granted. Trial was held in the Criminal Court of Baltimore on June 8, 1966, before a jury, Judge J. Gilbert Prendergast presiding. Appellants were found guilty and each was sentenced to sixty days in the Baltimore City Jail and fined fifty dollars plus costs.

Appellants raise seven allegations of error on appeal:

1. That Article 27, section 123 is unconstitutional on its face under the First and Fourteenth Amendments to the Constitution of the United States.
2. That Article 27, section 123 as applied was an unconstitutional abridgement of the appellants' right of free speech, expression, petition and assembly, guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.
3. That appellants' convictions violate the First and Fourteenth Amendments because the trial court refused to instruct the jury that appellants had a Constitutional right to express their political beliefs and that the jury could not convict on the basis of a disagreement with appellants' expressed views.
4. That the denomination of appellants' cause before the jury as an "appeal" deprived them of their statutory right to a trial de novo in the Criminal Court of Baltimore City, and their Federal Constitutional right to a fair trial.
5. That the refusal of the trial court to question jurors on the voir dire examination about relatives serving in Vietnam deprived appellants of their statutory right to challenge jurors for cause.
6. That the trial court committed reversible error in reopening the case to allow the testimony, highly prejudicial to the appellants, of a witness for the prosecution who had been taught and prompted by the content of the previous testimony.
7. That the trial court committed reversible error by failing to give a promised instruction that the Jury should exclude from consideration the evidence of events inside the recruiting station.

The evidence adduced below established that on Monday, March 28, 1966, at approximately 3:00 p.m., a group comprised of 30 to 40 demonstrators, evidencing dissatisfaction with the United States policy in the Vietnam conflict, congregated outside the United States Recruiting Station at 3328 Greenmount Avenue, Baltimore, Mary-

land. Subsequently, three of the appellants entered the Recruiting Station and demanded, through their spokesman, Harding, that their protest postres be displayed inside. This request was rejected and the appellants refused to leave until there was compliance with their demand. Thereafter, the three additional appellants also entered and joined the original three.

Mr. Frank Udoff, United States Marshal for the District of Maryland, approached the appellants shortly before the usual 5:00 p.m. closing time, identified himself, and requested them to leave peacefully. This request was rejected and it became necessary for Mr. Udoff to deputize several Baltimore City policemen to assist in the physical removal of the appellants to the sidewalk outside. By stipulation, there was no dispute as to the authority of the Marshal to so remove the appellants.

Some appellants were carried outside and deposited in a prone position upon the sidewalk while others were escorted out. Two appellants attempted to crawl back to the doorway and thus bar its closing.

Appellants then assumed either a semi-circular sitting or prone position, fully blocking the ten to twelve foot sidewalk for picketers and pedestrians alike. This performance attracted a gathering of between 80 and 100 onlookers. Some of the gathering became hostile and hurled statements at the demonstrators inclusive of "let's get them", "we'll take care of them." As the crowd increased its discontent, the police found it necessary to hold the crowd back and to intercede between the two elements. As the situation grew more tense and the anger grew, additional sentiments were hurled from the crowd, such as, "Bomb Hanoi", "let's get them, I'll bust him in the mouth." The resultant turmoil was such that the police found it necessary to fend off the crowd's attempt to vent its displeasure on the demonstrators and to ward off the trampling of the appellants. The size of the crowd continued to increase.

At this juncture, the appellants were ordered by police to get up, but they declined to abide by the order. As the possibility of violence increased the order was repeated three times, but appellants continued to refuse to respect

the order. Subsequently, the officers arrested the appellants and charged them with disorderly conduct directly arising out of the obstruction of the sidewalk which consequentially was causing a public disturbance and the specific refusal to comply with three lawful commands of the police officers.

I and II

The thrust of the appellants' first and second contentions is that Article 27, section 123, Maryland Code Annotated (1967 Repl. Vol.), fails to afford sufficient fair warning that the conduct herein engaged in was subject to criminal sanctions and is therefore unconstitutionally vague and indefinite; and that, furthermore, the application of the statute infringed upon the rights protected by the First and Fourteenth Amendments.

All statutes come before this Court cloaked in a presumption of constitutionality. Therefore, any challenge levied at the constitutionality of a duly enacted statute must clearly establish that said statute plainly contravenes the Federal or State Constitutions, otherwise the presumption remains un rebutted and the statute will not be declared unconstitutional. See *Woodell v. State*, 2 Md. App. 433, 437, 234 A. 2d 890 (1967). Clearly, a statute is within the guidelines of the constitutional safeguards only if persons of ordinary intelligence would be able to know when their conduct would place them in violation of the specified statutory prohibition. *Connally v. General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926); *Lanzetta v. New Jersey*, 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 (1939). However, while compelling strict compliance to such guidelines, the Federal Constitution refrains from the imposition of impossible standards of specificity in the construction of penal statutes. The primary requirement is that a statute convey "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice." *United States v. Petrillo*, 332 U.S. 1, 8, 67 S.Ct. 1538, 91 L.Ed. 1877 (1947); *United States v. Woodward*, 376 F. 2d 136, 140 (1967).

The formulation of statutory language is, at best, an inexact exercise vulnerable to varying degrees of doubt and ambiguity. Therefore, the enunciation of the meaning and ambit of a specific statute by judicial construction strives to ascertain and define the legislative intent and purpose, and upon making of a determination of the legislative meaning the efficacy of the statute is more clearly and precisely promulgated.

In making our determination of the instant statute's constitutional posture, we remain attentive to the observation of Mr. Justice Holmes in *Roschen v. Ward*, 279 U.S. 337, 49 S. Ct. 336, 73 L.Ed. 722 (1929), when he stated at page 339:

"We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean."

Article 27, section 123, Maryland Code (1967 Repl. Vol.), states in pertinent part:

"Every person who shall be found drunk, or acting in a disorderly manner to the disturbance of the public peace, upon any public street or highway, in any city, town or county in this State * * * shall be deemed guilty of a misdemeanor; and upon conviction thereof, shall be subject to a fine of not more than fifty dollars, or be confined in jail for a period of not more than sixty days or be both fined and imprisoned in the discretion of the court * * *."

In rejecting a prior contention that the statute was unconstitutional on its face, the Court of Appeals in *Drews v. State*, 224 Md. 186, stated at page 192, through Judge Hammond (presently Chief Judge) that:

"The gist of the crime of disorderly conduct under Sec. 123 of Art. 27, as it was in the cases of common law predecessor crimes, is the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite a number of people gathered in the same area. * * * Also, it has been held that failure

to obey a policeman's command to move on when not to do so may endanger the public peace, amounts to disorderly conduct."

In *Sharpe v. State*, 231 Md. 401, 404, 190 A. 2d 628 (1963), while the Court of Appeals did not reach the question of whether the charge of disorderly conduct could be justified, it did observe that "[r]efusal to obey a proper order of an officer *may constitute* an offense justifying an arrest, particularly where there is profanity in the presence of others that may threaten a breach of the peace. Cf. *Drews v. State*, 224 Md. 186, 192 and cases there cited. See also *Lippert v. State*, 139 N.Y.S. 2d 751, *City of St. Petersburg v. Calbeck*, 121 So. 2d 814 (Fla.); *City of Saint Paul v. Morris*, 104 N.W. 2d 902 (Minn.). Other cases are collected in a note, 34 A.L.R. 566." (Emphasis added).

Then in *Harris v. State*, 237 Md. 299, 303, 206 A. 2d 254 (1965), the Court of Appeals stated:

"A failure to obey a reasonable and lawful request by a police officer fairly made to prevent a disturbance of the public peace constitutes disorderly conduct. *Sharpe v. State*, 231 Md. 401, 190 A. 2d 628; *Drews v. State*, 224 Md. 186, 167 A. 2d 341 (vacated on other grounds, 378 U.S. 547, 12 L.Ed. 2d 1032)."

Our review, therefore, is directed not only to the statute per se but to the judicial construction of same, as the cumulative effect constitutes the controlling constitutional posture of the statute at the time of the alleged offense. *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 92, 86 S.Ct. 211, 15 L.Ed. 2d 176 (1965); *Ashton v. Kentucky*, 384 U.S. 195, 198, 86 S.Ct. 1407, 16 L.Ed. 2d 469 (1966).

It is of considerable significance that the prior constitutional challenge levied upon this specific statute and section in *Drews v. State*, *supra*, 224 Md. 186, reversed and remanded on other grounds in *Drews v. Maryland*, 378 U.S. 547 (1964) was affirmed on remand in *Drews v. State*, 236 Md. 349, 204 A. 2d 64 (1964) and the appeal was dismissed and certiorari denied in *Drews v.*

Maryland, 381 U.S. 421 (1965). This in conjunction with the fact that similar disorderly conduct statutes have been held constitutional by the United States Supreme Court in *Feiner v. New York*, 340 U.S. 315, 71 S.Ct. 303, 95 L.Ed. 267 (1951), and *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1034 (1942) leads us to conclude that statutes of this kind are not repugnant to the Federal Constitution.

In *Feiner v. New York*, 340 U.S. 315, 318, 71 S.Ct. 303, 95 L.Ed. 267 (1951), the Supreme Court upheld the conviction of *Feiner* for violation of § 722 of the Penal Law of New York.¹

In that case, *Feiner's* activity was observed by the police without interference until, observing the changing tenor of the crowd, both for and against his expressed views, the police on three occasions, requested him to cease and desist. He refused to do so and the police finally "stepped in to prevent it from resulting in a fight."

In affirming, the Court stated at page 320:

"This Court respects, as it must, the interest of the community in maintaining peace and order on its streets. *Schneider v. State*, 308 U.S. 147, 160 (1939); *Kovacs v. Cooper*, 336 U.S. 77, 82 (1949)."

Applying the common sense doctrine, we find that the instant statute in conjunction with the previous judicial constructions cited was sufficiently definite to inform a man of ordinary intelligence of the nature of activity proscribed. Faced with the present facts and circumstances, it would unduly stretch our credulity to accept the urging that the appellants, after obstructing the

¹ Section 722:

"Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned commits any of the following acts shall be deemed to have committed the offense of disorderly conduct: 1. Uses offensive, disorderly, threatening, abusive or insulting language, conduct or behavior; 2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; 3. Congregates with others on a public street and refuses to move on when ordered by the police; * * *"

sidewalk by sitting and lying down thereon, and refusing to comply with the thrice repeated request by the police, were ignorant of the fact that they were engaged in disorderly conduct of such a nature as legally proscribed.

While it is clear that the protections afforded by the First and Fourteenth Amendments encompass a spectrum of application with regard to freedom of speech that includes the less pure non verbal freedom of speech, *Stromberg v. California*, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931); *Carlson v. People of California*, 310 U.S. 106, 60 S.Ct. 747, 84 L.Ed. 1104 (1940); *Brown v. Louisiana*, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed. 2d 637 (1966), freedom of even the pure forms of speech are by no means absolute. As Mr. Justice Holmes stated in *Schenck v. United States*, 249 U.S. 47, 52, 39 S.Ct. 247, 63 L.Ed. 470 (1919):

"[T]he character of every act depends upon the circumstances in which it is done. *Aikens v. Wisconsin*, 195 U.S. 194, 205, 206. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."

The controlling principle was enunciated as:

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger
* * *"

In the subsequent case of *Frohwerk v. United States*, 249 U.S. 204, 206, 39 S.Ct. 249, 63 L.Ed. 561 (1919), Mr. Justice Holmes extended the aforementioned statement in *Schenck, supra*, stating "that the First Amendment while prohibiting legislation against free speech as such cannot have been, and obviously was not, intended to give immunity for every possible use of language. *Robertson v. Baldwin*, 165 U.S. 275, 281."

Here, however, we are not confronted with such a pure form of expression as the verbalized or printed word, but by a particular form of conduct and as such

the constitutional protection afforded is more limited. We are unaware of any tenet of law which requires the State law enforcement facilities to stand impotently aside, while disruption and strife reign in the streets in the guise of protected activity, nor is the principle of standing responsible for the product of the force or chain of events that one puts into effect alien to our concept of justice. As Mr. Justice Goldberg stated in *Cox v. Louisiana*, 379 U.S. 536, 555, 85 S.Ct. 453, 13 L.Ed. 2d 471 (1965):

"We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech. * * * We reaffirm the statement of the Court in *Giboney v. Empire Storage & Ice Co.*, *supra*, (336 U.S. 490) at 502, that 'it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed'."

Our interpretation of the cases directed at the subject of free speech evidences to our satisfaction that it is the substance rather than the form of communication to which the protection attaches and such regulation of the form is constitutional where same arises from a legitimate State interest and not for the sole purpose of censoring the underlying thought or idea. See *Brown v. Louisiana*, *supra*, (383 U.S. 131); *Cox v. Louisiana*, *supra*, (379 U.S. 536); *Carlson v. California*, *supra*, (310 U.S. 106); *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); *Stromberg v. California*, *supra*, (283 U.S. 359).

We find the instant statute to be a proper exercise of the police powers of this State directed toward the maintenance of public order.

III

Appellants' third contention is without merit. The evidence before the trial court clearly established that the arrests and charges resulted from appellants' refusal to cease their obstruction of the sidewalk and resultant public disturbance and because they had refused to comply with three lawful commands of a police officer. We further note that the standing demonstrators were not arrested. Since the evidence adduced below rejected any substance to the allegation that the arrests were predicated upon suppression of political views, the instructions were properly rejected.

IV

Appellants' fourth contention is without merit. Appellants contend that the term "appeals" with respect to their trials, improperly informed the jury that they had been convicted in the Municipal Court of Baltimore City.

The record before use clearly establishes that the trial court excluded all papers reflecting the guilty finding below, and replaced them with papers designating them as "Appeals." Based upon the record below, this allegation constitutes a bald allegation devoid of any evidentiary showing of such prejudice.

V

Appellants' fifth contention also fails. The trial court inquired sufficiently into the areas of general bias or prejudice of the prospective jurors toward the appellants. While rejecting the specific request to inquire on voir dire as to whether or not the jurors had relatives serving in Vietnam, the trial court carefully inquired into whether any preconceived opinions or judgments existed on the jurors' part.

We find that having relatives serving in the Armed Forces an insufficient showing of alleged prejudice to constitute a challenge for cause.

VI

Appellants' sixth contention is devoid of merit. The matter of allowing the State to reopen its case by presenting another witness is clearly within the discretion of the trial court. *Tingler and Wright v. State*, 1 Md. App. 389, 392, 230 A. 2d 375 (1967). Concerning the apparent violation of the sequestration order, it is clear that even where such a violation exists, this would not of itself require a reversal. "It is within the discretion of the trial judge to determine whether to admit the testimony of the witness where there has been a violation of the exclusion order." *Cunningham v. State*, 247 Md. 404, 417, 231 A. 2d 501 (1967); *Mayson v. State*, 238 Md. 283 290, 208 A. 2d 599 (1965). We find no abuse of the trial court's discretion.

VII

Appellants' final contention is without merit. We find the events which lead to the ejection from the Recruiting Station, resulting in the appellant's presence on the sidewalk, constituted a proper and relevant background to the crime charged.

Judgment affirmed.

IN THE COURT OF APPEALS OF MARYLAND

Misc. Docket No. 68 September Term, 1968

(No. 52 - September Term, 1967 Court of Special Appeals)

DONALD C. BACHELLER, ET AL.

v.

STATE OF MARYLAND

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED by the Court of Appeals of Maryland that the said petition be, and it is hereby, denied.

/s/ HALL HAMMOND
Chief Judge

[SEAL]

Date: November 26th, 1968.

SUPREME COURT OF THE UNITED STATES

No. 53 Misc., October Term, 1969

DONALD BACHELLAR, ET AL., PETITIONERS

v.

MARYLAND

On petition for writ of Certiorari to the Court of Special Appeals of the State of Maryland.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS AND GRANTING PETITION
FOR WRIT OF CERTIORARI—October 13, 1969

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 729 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.